Webster: Good Enough for the FBI? **RAMSEY CLARK**

THE NATION

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EDITORIALS

Coal in Shambles

Even if miracles of reasonableness and mutual accommodation immediately occur on both sides of the bargaining table, and if the same sweet spirit suddenly overcomes the angry men who dig the coal, the coal strike is already a serious national problem, and great industrial trouble lies ahead. Ohio, which is unusually dependent on coal for its electricity, is threatened with a 75 percent cutback in power, which would force the closing of scores of factories, many of them key suppliers to the auto industry. That is the immediate painful situation, but the troubles arising from the failure to write a contract the miners can accept will be widespread.

As we noted editorially two months ago (December 17), circumstances were against a decent solution of the problems of coal labor from the very start. Most of the coal-using corporations, sitting on large stockpiles, were in a position to outlast the miners. For their part, the coal owners were determined to establish "discipline" in the pits as the price for raises in pay and benefits. That meant no more wildcat strikes at the pithead, even over safety conditions. That in turn required a union that could enforce the contract.

There is no such union in coal. The benevolent dictatorship of John L. Lewis is gone, along with the strong-arm succession of Tony Boyle, who was apt to eliminate his opponents by any and all means. The United Mine Workers of America is in shambles just when what the employers demand requires the maximum of leadership and cohesion. The miners know that their democratically elected president, Arnold Miller, is simply incapable of negotiating a contract they can live with.

As this quite terrible situation developed during the longest coal strike in our history, the Carter administration sat by and let matters take their course. The President intervened, asking that negotiations be moved to the White House, only after the union's bargaining council had overwhelmingly rejected the proposed contract and the coal operators were canceling meetings with Secretary of Labor Marshall. Marshall himself had got involved late in the game and his usefulness as a mediator has been compromised by his statement that the rejected contract was "genuinely good for both sides." The government's intervention was late, cold and inept.

A more vigorous, imaginative and pro-labor administration would have made its presence felt on both sides of the table long before the contract collapsed. That does not mean that it should have intervened with threats of invoking the Taft-Hartley Act and ordering the miners back to work for the "cooling off" period. Such labor statesmen as Senator Goldwater and House Minority Leader Rhodes are of course demanding Taft-Hartley action, and Rhodes showed his knowledge of mining, along with his great heart, when he called the UMWA "the flakiest union in the United States."

The government had an essential role to play in these negotiations, mainly because of the chaos in the UMWA. It may be difficult to spell out what concrete steps it could have taken, in what sequence, but there was no sign of leadership from the administration anywhere along the way toward disaster. If Carter had been able to make the miners feel that at least his administration understood their genuine problems, they might not have felt so desperately abandoned as they watched Miller stumble toward a contract whose "discipline" provisions are simply unacceptable. It should be added that the UMWA has had very litttle help or moral encouragement from the rest of organized labor.

One consequence of the coal impasse, beyond the suffering of the miners and their families and of workers in other industries dependent on coal, is that the chances of reforming the National Labor Relations Act, which Congress is now considering, will be considerably diminished. There will be anti-labor choruses of increasing intensity on the floors of Congress and much talk of labor "irresponsibility." The voices will be few that will assign any of the responsibility for this sad situation in the coal fields to the energy corporations and their allies in the White House. Neither the President nor his friends in the industry seem to remember all that talk about "social accountability" that was supposed to be the new spirit in America's board rooms.

Carter's Big Spy Case

The comedy called Intelligence is a play of a thousand acts. It never ends and the audience sits captive, though often transfixed with boredom, because its own fate, we have all been told, is being decided up there on the stage.

Act 721 has ended with the expulsion of Vietnam's Ambassador to the United Nations after the arrest of an American employee of the USIA and a Vietnamese living in Washington. Secrets about our government's attitude toward relations with our one-time enemy are said to have been passed by the two alleged confederates to the U.N. diplomat. The drama lies in the fact that never before has the United States Government asked for the expulsion of anyone with the rank of Ambassador, as the first step in a diplomatic riposte. It follows that the secrets he is supposed to have sought and obtained must have been of the highest consequence.

It requires great powers of imagination on the part of the audience to endow this tale with the proper dramatic tension. Nevertheless, we shall make the attempt. We must first overcome the feeling that this country's relations with Vietnam are far from the front burner on the national stove. Desultory talks go on in Paris about "normalizing" relations; when Hanoi embarrasses us by bringing up the series of promises and bribes Nixon and Kissinger made and offered in 1972 (in order to produce that fraudulent "peace is at hand" statement on the eve of the election) we turn a deaf ear.

Still, we are told, secrets were given to Ambassador Dinh Ba Thi, his country's representative at the U.N.—not in Washington, which makes the expulsion all the more remarkable. Since "national security" is involved, we are of course not told what they were or even what they were about. Our attention wanders momentarily when we reflect that the American charged with this

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crime of espionage, Ronald Humphrey, was a medium-level employee of the U.S. Information Agency and thus, by definition, not privy to state papers worthy of the shredder. Lest we be thought naive, we should add that he might have had access to a pumpkin stuffed by others with higher security clearances.

If the record of the United States Government in these matters were not so stained and if the memory of the political uses of "national security" cases were not so fresh in our minds, we might not be taking such a skeptical view of the Humphrey-Truong case. And there are other disturbing aspects in this one. One is that the Department of Justice gathered much of its evidence on Humphrey by television monitoring of his office, done without a warrant. *The Washington Post* has reported (February 10) that President Carter personally authorized this warrantless surveillance.

In the current state of the art and the law, only in "national security" cases is such surveillance without a court order in any way permitted. But the law is not clear on this "right," the Supreme Court never having ruled on it and the lower court in the last such case to reach the federal appellate level having ruled that the President has no inherent right to avoid obtaining a warrant. Common sense would suggest that such a Presidential action—on and beyond the fringes of the constitutional process—should be taken only in a case seriously endangering the national security, seriously defined.

Nothing that has yet been brought out in the Humphrey-Truong case suggests the possibility that anything the Vietnamese might have learned by the espionage that has been charged could have had such an effect. The documents Humphrey is said to have given to Truong have been reported as bearing no higher security classification than "secret," the category routinely used for intra-bureau gripes, and most were "confidential."

Other, and quite dangerous, considerations seem to be at work in this case. The Carter administration, like its predecessor, is eager to magnify its right to poke and pry without constitutional inhibitions getting in the way. A Justice Department source told *The Washington Post* that "the department wants blood on this one"—that charming phrase meaning that it wants to widen its power to use surveillance without having to resort to the courts.

This ambition afflicts every administration like an inherited tic and the symptoms never seem to subside. The other branches of our government, and of course the public, have no reason to gratify this Executive appetite. In fact they should resist it with all their power.

The Virus Gap

Since it is not every day that we have an idea both patriotic and practical, we wish to call one to the attention of *National Review*, or better yet *Commentary*, and their research affiliate, the Georgetown University Center for Strategic and International Studies. It seems worth investigation by the center and then sensational exploitation in the magazines.

We are speaking of the Russian flu.

The facts are plain, even stark. This crippling virus,

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which became epidemic in Soviet Asia, is laying low the Youth of America. It attacks principally those between the ages of 18 and 25 (military prime). In its sinister path across this continent, it has devastated, successively, the Air Force Academy in Colorado (more than half the cadets stricken), the U.S. Military Academy at West Point (2,400 of 4,400 infected) and the U.S. Naval Academy at Annapolis (3,000 of 4,200 midshipmen prostrated). At civilian institutions, interestingly, the ravages have been much less severe.

It is difficult to avoid the conclusion that the wily Russians have developed a strain of influenza that homes in on our military elite in training. If that is so, and we leave it to the epidemiologists to confirm our initial finding, it would seem obvious that the Soviet Union's bacteriological warfare specialists have developed a virus of pinpoint virulence, so to speak. It is clearly a breakthrough for an adversary which, only a generation ago, was accusing our test-tube types of dropping killer potato bugs from planes over Korea and China.

To show our politico-scientific objectivity, we here admit or stipulate that there are in fact more lethal strains of influenza virus—for instance, "A-Texas," a native American product. But that would not seem to invalidate our finding. Obviously the Russians would not uncork their real killers during an experiment. All they are after at the moment is to test the communicability of a virus in a selected population, in this case military cadets. And the preliminary evidence is that the Soviet Union possesses a technological capability in virus proliferation that far surpasses our own. We leave it to the defense committees of Congress to draw the appropriate conclusions, not to mention the conclusive appropriations. A crash program of some sort comes to mind.

While we are at it, we should note the curious fact that most strains of influenza seem to originate in the mysterious East. In 1956 there was the so-called "Asian" variety which came to us from China. Then there was 1968's "Hong Kong" flu. Even "A-Victoria" is named for a city in Australia. In 1976 we managed to spawn one of our own, the so-called "New Jersey" brand, otherwise known as the "swine flu" which, as everyone remembers, caused President Ford to press the panic button and mobilize all the unfertilized eggs in the land for a "massive" inoculation scheme. That cost tens of millions of dollars on behalf of a President determined not to be caught asleep at the syringe in an election year, and disappointingly there was less than a handful of cases of that undreaded disease. Further proof, if you will, that the United States is just not in the same bacteriological ball game as our implacable adversaries.

To avert panic in this country, no doubt, some of our scientific brethren have come up with a soothingly banal explanation of the ominous invasion of our military academies by the "A/USSR/77" virus, to give it its full and chilling scientific name. They claim that this strain of influenza, which first visited us in 1947 and departed twenty-one years ago, left the older part of the population generally immune to it. Hence the disproportionate affliction of the young. But these men in white conveniently omit the fantastic decimation, and more, of our men in uniform. They omit this factor because they do not wish to admit their inability to inflict an equivalent scourge upon the Russians. In the race for bacteriological supremacy the United States is a helpless giant, if not indeed a pitiful one.

Webster: Good Enough for the FBI?

Ramsey Clark

The director of the FBI does not wield ordinary government power. He commands an enormous national crime investigation bureaucracy. That function can be a sword against or a shield for individual freedom and democratic institutions, assaulting or protecting the values we treasure most.

The new director, William Hedgcock Webster, has not taken office at an ordinary time. Nearly six years after his death, the specter of J. Edgar Hoover still haunts the bureau. Perhaps, as Tom Wicker has suggested, Hoover "wielded more power, longer, than any man in American history." A half century of willful direction is not dissipated in a day, and the nature and extent of past, vast misconduct still remains secret from the people.

The urgent need is for an extraordinary person to place the FBI within the framework of constitutional government and direct it under the rule of law. Is Mr. Webster such a person? As always, we are told, most certainly. President Nixon promised that L. Patrick Gray was the best when he designated him to succeed Mr. Hoover. The public and press, knowing little and hoping much, wanted to agree. Later we learned that he personally accepted and destroyed files that might have contained evidence of federal crime by the President's men. The odious comparison is used only to remind us that such recommendations have little to recommend them.

Our ability to predict future performance is limited, but we can analyze an individual's experience, conduct, even character, and make a rational estimate. The country needs an individual of highest personal integrity, devoted to equal justice under law, experienced in the administration of a huge bureaucracy, knowledgeable of the investigative function, able to inspire a dispirited agency, strong, independent, apolitical and objective. In short, a person capable of creating the vision of the proper role of the police in a free society.

To have suggested William H. Webster for the role eight years ago, when Mr. Hoover still held great power, would have caused disbelief, not to mention the Director's wrath. Eight years ago, Mr. Webster was the eighth-listed lawyer in a medium-sized law firm with a

Ramsey Clark was Attorney General of the United States in the Johnson administration.

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lucrative corporate practice in St. Louis, Mo. He had been a very active Republican, which presumably led to his selection to be U.S. Attorney for the Eastern District of Missouri during the last year of the Eisenhower administration. Mr. Hoover believed such politically appointed personnel should not have access to FBI files and intelligence.

In 1970 President Nixon, on the advice of Attorney General Mitchell, appointed Mr. Webster to the District Court and, in 1973, on the advice of Attorney General Richardson, elevated him to the Court of Appeals. The bench is a quiet place, sometimes the eye of the storm, and there he reviewed fragments of past conduct of the FBI as they surfaced in scores of cases. Critical human issues, public safety, civil liberties, equality, government programs for social justice were generously sprinkled among the cases that passed before him. In the more than 600 cases Judge Webster participated in on the Court of Appeals, he dissented in sixteen. He stated his individual opinion while concurring with the court only three times. His was not a strong, independent judicial mind, prepared often to stand alone on grounds of conviction. Our times do not permit a real consensus in 97 percent of the conflicts that parade through court reviews. Not a spark has been seen in Webster's record to indicate high sensitivity to the role of law in achieving equality, freedom or justice, as distinguished from authority. No utterance is heard about "dirty business," no cry that, "We must not be afraid to be free." He answered the anguish of Wounded Knee where the FBI played an ignoble part, the plea for effective desegregation of schools, the contention that a 100-year prison sentence was cruel and unusual punishment, with dispassionate discipline and no relief. Some believe the law should be disciplined passion. And while he sometimes ruled for the right of the individual, it was in the clear case and conservative fashion. His court work, over 275 criminal matters and 125 opinions, is susceptible mainly to subjective evaluation. It was not bold, strong, imaginative and just, but cautious, conventional and legalistic. He was for progress sometimes, against change always.

It was chance of judicial service that exposed Mr. Webster to the opportunity of his new assignment. Griffin Bell, the Attorney General, was looking for another judge to join him and Judge Wade McCree, a graceful man and Solicitor General, in the three most important positions in the executive Department of Law. There are some aspects of judicial service that commend it as a qualification to be director of the FBI. Knowledge of law, exposure to alleged abuses by investigators, a prime role in constitutional government and personal stature are important. It was important, this time, to go outside the agency. It was important to select a non-Democrat, but wrong to select a formerly extremely active Republican. Still, it seems clear, Mr. Bell went to the judiciary, again to its detriment, following the cardinal Hoover rule: Protect the administration (i.e., the bureau). It is safe. Having decided on that course, though non-judges were also considered, he did not come near to getting the best judge as measured by revealed character, known experience and judicial performance. Mr. Bell's insistence on a ten-year service commitment may please the Congress which has put that ceiling on the appointment, but it ignores the lessons of history. A director of the FBI should be limited to four years.

Mr. Webster looks like a model corporate executive, successful commercial lawyer or senior FBI agent. These models are fungible, as their values have been. Mr. Webster's main interest in the law is reflected by his unusual service while a judge as chairman of the American Bar Association's corporate law section. He is wealthy. Personal assets of $898,000 were reported, with more than half a million in major corporate stocks after seven years on the bench, such interests raising the inherent potential for disqualification in certain cases.

His club memberships must be cause for concern by all who believe in life with principle. This is not 1961, when Robert Kennedy and others resigned from the Metropolitan Club because of its exclusionary policy. We have been through two decades of the second Reconstruction. We have seen what it meant when President Nixon appointed Jerris Leonard to head the Civil Rights Division, knowing he was active in a club that placed a racial restriction on membership: it meant no commitment to civil rights. Life is choice. We conform to racism or defy it. Mr. Webster chose to conform. As president of a "white only" club, he sought to end its discrimination; failing in that, he continued to enjoy its company.

His answers during his confirmation hearing are not reassuring. The director must be nonpolitical. The Judiciary Committee report says: "He would consider . . .logging in all . . . communications from White House personnel, members of Congress, and others." He should not consider; he should do it!

His response on the need for the imperative Congressional charter or law to control the FBI was weak:

> It seems to me that they [Congress] might well set some guidelines for the bureau in determining what types of investigation and under what circumstances. I hope that the charter would not undertake to tell us how to conduct those investigations.

"How" is the heart of the matter: wiretap, bug, informer, black bag, mail opening, phone dial register, *agent provocateur*, confession, no-knock, infiltration, Cointelpro?

His sense of the neutrality of investigation—"Just the facts, Ma'am"—may be reflected in another answer:

> At that point the nation has a legitimate interest in gathering the facts to support the conclusion that this is going to happen.

But what about gathering the facts that may happen to support innocence?

His notion of when an investigation can properly begin is a little loose:

> In terms of positive acts of investigation, infiltration, and so on, there has to be a level of conduct. Something has to have been said or done which could reasonably lead people of reasonable minds to believe that lawlessness is not far away.

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He may like conspiracy law, a corpus so inherently unfair it should be repealed:

> I think the scope should be the investigation of lawless acts or conduct in the nature of conspiracy in which lawless activity is likely or imminent.

His record on the First Amendment is suspect. Even if, as has been claimed, he played a moderating role, he chose to include among his activities, in his *Who's Who* entry, published one year before his appointment to the District Court: "Chmn, St. Louis County Decent Lit. Comm, 1963——"

But then Robert Kennedy had about the poorest qualifications of any person ever appointed Attorney General and proved to be one of the best.

Liberty will be preserved, if it is, not by the director of the FBI but by the people. If we insist on a Federal Investigative Agency Review Board, on a law to control the FBI, on strict control over computers and the National Crime Information Center, on a diffusion of investigative power through the Executive, on the elimination of the intelligence function, on—as Clarence Kelley urges—"quality over quantity" in addressing crime, on the constant re-evaluation of priorities, on equality in enforcing the laws against corporations, the wealthy, the wearers of white collars, on the prohibition of wiretapping and other ignoble means, that every act of police be authorized in law and violations by police prosecuted as the highest priority, we can have freedom and safety.

We may at least hope that Mr. Webster will listen with us to John Locke, concerning civil government:

> So that however it may be mistaken, the end of the law is not to abolish or restrain, but to preserve and enlarge freedom. □

NO PUSH CAME TO SHOVE

Why the Consumer Bill Went Down

MARK GREEN

What can you say about a bill that passed the House or Senate five times in seven years, that was endorsed by President Carter, Speaker O'Neill and 150 consumer, labor, elderly and citizen groups, that the public supported by a 2 to 1 margin in Harris surveys—and yet was defeated 227 to 189 in early February?

In a Washington populated by surrogates and symbols, the vote against legislation to create a consumer advocacy office in Washington was widely heralded as a major defeat for Ralph Nader and President Carter. But surely this misses the more significant point that it was a major defeat for *consumers*. As the fourteen Democratic and Republican members of the Senate Governmental Affairs Committee unanimously concluded in 1977, "at agency after agency, participation by the regulated industry predominates—often overwhelmingly. . . . For more than half of the proceedings there is no consumer participation whatsoever. In those proceedings where participation by public groups does take place, typically, it is a small fraction of the participation by the regulated industry." The purpose of this consumer advocacy office was to make regulation work better by making the adversary process work better. Its defeat means that the influence of producers' interests on regulation will continue.

In defeat, though, the consumer movement learned valuable, if expensive, lessons. The reasons for the bill's loss illuminate how power is played out in The City of Results. Why did it lose?

Business Lobbying. Big business interests—such as the U.S. Chamber of Commerce, the Business Roundtable, the National Association of Manufacturers, Armstrong Cork, Procter & Gamble, Sears—made the bill a litmus-test issue of a Representative's fidelity to their creed. Speaker of the House Tip O'Neill said that he had "never seen such extensive lobbying" in his quarter-century in Congress. A campaign of stimulated mail inundated the desks of undecided members. The Business Roundtable* hired Leon Jaworski to lobby against the bill in early 1977, and later hired the North American Precis Syndicate (NAPS) to send around canned editorials and cartoons against the consumer agency to 3,800 newspapers and weeklies. These prepared statements—statements that never acknowledged as their source a business lobby opposed to this bill—appeared approximately 2,000 times, according to NAPS. Identical hostile editorials also appeared in ten newspapers around the country, newspapers not of the same chain. (*Oxnard Press-Courier*, Calif.; *Thomasville Times*, N.C.; *Mt. Vernon News*, Ohio; *Middletown Journal*, Ohio; *Ypsilanti Press*, Mich., *Santa Paula Chronicle*, Calif.; *Greenwood Commonwealth*, Miss.; *Roseburg News-Review*, Ore.; *Kentucky New Era*; *Murray Ledger and Times*, Ky.).

The U.S. Chamber of Commerce conducted a national opinion poll in 1975, which it then repeated several times over the next three years, concluding that "81 percent of Americans are opposed to a new consumer agency." The Library of Congress, however, discredited this survey as biased and unfair because the key question was phrased as follows (italics added): "Those in favor of setting up an *additional* consumer

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*A study of the Roundtable released by Congress Watch shortly before the House vote documented that 58 percent of the 157 members of this group had in the past five years either admitted to an illegal or improper payment, been named in an antitrust case by the Antitrust Division or been named in a Federal Trade Commission complaint.

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protection agency on top of *all the other agencies*," etc. This phony poll led an outraged Sen. Charles Percy to denounce it from the floor, saying, "The dissemination of useless poll information does nothing to help the image of American business, which is at an all-time low."

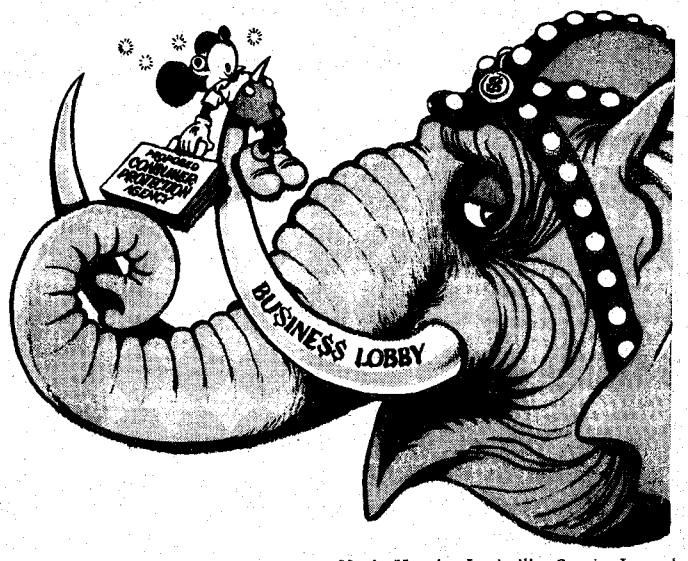
The Anti-Government Mood. Business efforts successfully capitalized on a political fad, which one could call "the new anarchism." It holds that all regulation is bad, indeed that all government is bad. From Wallace to Reagan to Ford or even Carter, the sense that government is the problem, not the solution, has spread from the ultra-Right to infect some moderate members of Congress as well. One of them, a ranking Northern Democrat, told Vice President Mondale that he opposed the bill because we have "too much government." (It will be interesting to see how such Congressmen apply this maxim in the future to corporate subsidy programs worth billions.)

The opposition lobby had the money and machinery to propagandize that the issue was "big government"—not consumer fraud, not consumer health and safety, not one-sided regulatory proceedings. Thus, the repeated refrain that the Office of Consumer Representation was just more "OSHA-like" regulation stuck—even though there was no reasonable comparison between a regulatory agency with a $136 million budget and the power to order business to keep fire extinguishers 2 feet off the floor, and a $15 million nonregulatory advocacy office armed only with the power of an advocate.

As the vote neared, many members acknowledged that they supported the bill on its merits, but didn't, as one said, "want to explain 500 times in my district why the consumer office wasn't just more government." Afterward a Southern Democrat who swam against the current and voted affirmatively said, with some bitterness, "If we had voted today on a bill to abolish the U.S. Government, it probably would have passed."

Defections Among Anxious Moderates. Anxiety over right-wing opposition exploiting the "big government" slogan provoked defections from the consumer camp. Reps. Tom Foley (D., Wash.) and John Anderson (R., Ill.)—respectively the chairman of the House Agriculture Committee and the chairman of the Republican Conference—had previously supported the legislation. Then in the spring of 1977 these two respected House bellwethers recanted and announced their opposition—Foley three days after an ultraconservative had won a special Congressional election in nearby Seattle, and Anderson after discovering that his own party's right wing had targeted him for defeat. These defections made respectable subsequent ones by moderates in marginal districts, e.g., Representatives Schroeder, Panetta and Fish: who, like Anderson and Foley, were nervous about challenges from the Right. Speaker O'Neill's injunction—"some members say they're worried about the next election; do the right thing and the election will take care of itself"—was not always heeded.

There were, to be sure, some profiles in courage. Rep. Wyche Fowler of Georgia was the only member of his



Hugh Haynie, Louisville Courier-Journal

"Well, After All . . . I Had to Protect Myself from That Vicious Monster!"

delegation to vote yes; Rep. Jim Mattox of Dallas voted yes; so did Republicans William Cohen of Maine, Carl Pursell of Michigan and Chalmers Wylie of Ohio, despite substantial contrary pressure (a week before the vote one of these members picked up a suit at his cleaners, and found a note opposing the bill pinned to its lapel).

Lack of Democratic Party Cohesion. The Republicans made the consumer bill a partisan issue, as peer pressure led House Republicans to vote 11 to 1 against. Yet fully 101 Democrats voted no. In the freshman Democratic class of 1975, twenty-five voted yes and twenty-four voted no. Many in the Democratic opposition, of course, were the Dixiecrats and far West Representatives who often join with Republicans to oppose reform measures. But added to these blocs were a couple of dozen moderates (even four Democratic *co-sponsors* of the bill—Representatives Rose, Volkmer, Steed and Neal) who made the margin of difference. Whatever the cause—a devolution of the powers of the Speaker, an antipathy to Rayburn-like arm-twisting or Johnsonian log-rolling, the decline of Democratic Party funds for candidates, the non-coattails of President Carter—this lack of party cohesion in the face of Republican solidarity consternated Tip O'Neill. He had worked intensely and passionately on behalf of the bill. On the House floor just before the vote, he bellowed out his support in tones recalling Norris and Kefauver: "Never mind the commitment that you may have made to a businessman along the line. You have only one commitment, and that commitment is to the public . . . the consumer."

Having thus committed his prestige, the defeat was especially wounding to O'Neill. At a raucus meeting of Democratic Whips the next day, he thundered that Democratic Congressmen couldn't reap the benefits of their party association, and then vote Republican—especially when the Republicans had made this a partisan issue. To do so would lead to collective calamity in November. Others in attendance complained that President Carter's half dozen phone calls the day before the expected vote

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was an underwhelming effort. There was widespread resentment that they had fought harder for the administration's bill than had the President.

Business Money Instead of Party Loyalty. Replacing the benefits of party cohesion and Presidential coattails of yesterday is the promise of business contributions today. One of the "reforms" of recent years permitted corporations to raise money for candidates. Last year, for the first time ever, corporate contributions through "political action committees" (which do not include the millions given by individual executives) exceeded labor contributions $987,000 to $844,000. Many Democrats can now ignore the exhortations of a Speaker or President because they have independent access to the kind of money needed for re-election.

One California Democrat in a meeting with consumer advocates half-joked that he might vote for the consumer bill if their groups could throw him the "$100,000 fundraiser" he might sacrifice by doing so. Two swing House members candidly told labor lobbyists that they had recently and for the first time raised $20,000 to $40,000 from small business groups, who had been instructed by the Chamber to be opposed. One Representative was told by his campaign finance chairman that their major contributors were opposed to the bill—at which point, to his credit, the Congressman fired his finance chairman. One Florida Representative told Ralph Nader that he had no objections to the bill, but added, "I'm afraid that the Chamber will run a candidate against me in the primary."

Large business interests, it must be emphasized, do not crassly announce that money will or won't be forthcoming, depending on how a Representative votes. They don't have to. But this system of corporate funding of campaigns, rather than public funding, results in business interests shaping legislation by the mere weight of their wealth.

Reversal by The Washington Post. After endorsing a consumer advocacy office several times in the past, *The Washington Post* stunned both business and consumer advocates by editorially *opposing* the bill the day the voting began. The reasons offered were embarrassingly muddled: the editorial talked about how consumer-oriented had been Carter's appointments (as though having a Brandeis on the bench would mean a defense counsel was no longer needed) and it managed to deprecate the need for consumer representation in genuine adversary proceedings as "another pile of briefs on commissioners' desks." But for those Representatives who needed a plausible reason beyond the "big government" slogan to oppose the bill, the respectable *Post* provided the perfect fig leaf.

Interestingly, the day after the bill's defeat, a front-page *Post* headline repeated the charge that Ralph Nader had defeated the bill—not the business lobby against it, not the previous supporters who abandoned the bill, not its own editorial. The theory was that Nader's pressure on wavering members had antagonized them into voting no. A few members tried to use Nader as an alibi for their anti-consumer vote, which is a comment on their own independence and integrity. If the U.S. Chamber goes into districts, Nader obviously will do so as well. It is a useful way to give members of Congress a conscience—in H.L. Mencken's definition of conscience as "the inner voice which warns us that someone may be looking." Or as Admiral Hyman Rickover said of some members' criticism of Nader on this bill, "They never complain when business tries to buy them, only when someone stands up for the people."

Poor Timing. The vote on the consumer agency was originally to have been taken last November, at the very end of the first session of the 95th Congress. But a good-faith disagreement occurred between Esther Peterson, the President's Consumer Adviser, and consumer groups on the one hand, and the House leadership and Frank Moore's White House Lobbying Office on the other. The former thought that if the votes were ever going to be there, it would be in November—due to the favorable momentum generated by the nationwide grassroots "nickel campaign" for the bill and by a compromise version that had corralled fourteen new votes. The latter thought the votes weren't there. And, especially, the delay was due to the Speaker's and the President's preoccupation with other matters at the end of a hectic session. The bill was pulled from the House calendar.

Anybody can speculate as to what might have happened in November, but at least this much is known: in the week before the originally scheduled vote, Representatives Rose, Neal, Steed, Volkmer, English, Pressler, Cavanaugh, Cornwell, Fish and Gammage all indicated they would vote for the bill; also Representatives Koch and Badillo were then still in Congress. By February, *none* of these Congressmen voted in favor. Supporters of the bill allowed business interests three months to build up pressure against wavering members—and they did.

The bill's demise is instructive to the consumer, Congressional and business communities. Consumer groups must reconcile two divergent facts. On the one hand, Louis Harris calls consumerism the most broadly supported movement he has ever studied; his surveys document a 55 to 28 percent public endorsement for the consumer advocacy bill. Yet it lost. The goal for consumer groups, therefore, is to convert broad popular support into legislative punch. The problem is how to organize millions of unwealthy, scattered supporters so that they may prevail against a minority of wealthy, focused interests.

Two obvious approaches include local organizing and public finance reform. "You win or lose in the districts, not in Washington," said freshman Rep. Donald Pease to two supporters of the bill. Consumer organizations will have to organize better at the neighborhood level, so that on future votes people will hear from interested, indigenous consumer groups and not merely from local Chamber voices. In addition, until some version of public funding of public elections cuts the cord between business giving and members voting, citizen interests will forever compete at a disadvantage in the political marketplace. Nothing succeeds like failure, and if the defeat of H.R.

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9718 leads to these two results, it may yet prove an inadvertent blessing.

This case study demonstrates why our elected officials should have the courage and skill to try to educate their districts about the costs *and* benefits of government programs, rather than merely surrender to purchased prejudice. Congress allows slogans to paralyze its effectiveness when it snaps to attention on hearing the phrase "big government." "You know, these bureaucrats aren't people that fell from Mars," commented Hubert Humphrey in a 1975 debate with Ronald Reagan; "they are the sons and daughters of people that we think of rather highly." It should not prove impossible to argue that government can work to improve people's lives—that the Civil Rights Acts give blacks legal equality, and the South hundreds of black officials; that the Auto Safety Act saves an estimated 12,000 lives a year; that the Food and Drug Administration prevented the sale of thalidomide in the early 1960s; that public financing for the past Presidential election succeeded in keeping much tainted money away from our highest office.

Finally, as for the big business groups, this bill may prove that nothing fails like success. When the vote tally pushed beyond 218 on February 8, business lobbyists in the House galleries burst into applause and much backclapping. But one wonders whether big business should cheer when large companies received a 16 percent favorable rating in a recent Harris poll. In a survey conducted for the House Ethics Committee, eleven organizations were rated according to the public's perception of their ethics. "Consumer action groups" rated first and "large companies" tenth.

Big business lobbies have handed candidates an issue for next November. It is, "Who owns your government—the people or big business?" It is, "Why can't the President get energy reform, tax reform, consumer reform? Because big business won't let him." Ultimately, business lobbyists cannot continue to oppose all attempts to reform government and society. "What counts now is not just what we are against," said Adlai Stevenson in 1952, "but what we are for." Since corporate illegality, consumer fraud, and one-sided agency proceedings continue, it is now time for business to do more than veto change. What is *their* consumer program—for without one they will continue to deserve the obloquy they earn. "Those who want it all," said Jack Brooks, chairman of the House committee that reported out the consumer bill, "will lose it all." □

ISRAEL'S COLONIES

SETTLEMENTS DEEPLY IMPLANTED

IRENE GENDZIER

The Carter administration is expressing concern, not to say irritation, at what it sees as the Israeli Government's ill-timed decision to continue settling occupied territory. But the policy on settlement followed by the present Israeli administration has been in process since just after the Six Day War. From 1967 to 1977, more than ninety settlements had been or were being established in occupied territory; that is to say, in the West Bank, the Gaza Strip, Sinai and the Golan Heights. Furthermore, it is estimated that the cost, in 1976 prices, for these settlements was in the area of 2.8 billion Israeli pounds (approximately $350 million), and the figure will continue to rise as a result of plans for additional settlements. In August 1977, Minister of Agriculture Sharon, a member of the Begin government, endorsed the formation of a team to consider the creation of ten new towns in the West Bank. And despite the objection of the Jewish Agency and the reported misgivings of the government itself, based on the relatively few people willing to become settlers, Sharon later submitted a twenty-year settlement plan for the occupied territories of the West Bank and the Gaza Strip, with a projected total population of no less than 2 million Israelis. It is an ambitious project, given the fact that there are at present no more than 10,000 Israelis settled in occupied territory, excluding those who have moved into East Jerusalem, annexed by Israel in 1967, and who number between 45,000 and 50,000.

It must be evident, then, that Israeli policy on the settlements has roots much deeper than Prime Minister Begin's espousal of the controversial pioneering, nor is it exclusively the result of Gush Emunim militancy. It was the Labor Party, in power in 1967, that initiated the practice of establishing communities in occupied territory, and it is the Labor Party today, in conjunction with Mapam and other establishment parties, that continues to side on this issue with the right-wing parties politically closest to the Prime Minister. On December 21, the newspaper *Al Hamishmar* reported a talk in which Shimon Peres, present head of the Labor Party, acclaimed his party's responsibility for the settlements in occupied territory, and denounced Begin's alleged "concessions" to Egypt.

In June 1967, the Israeli Cabinet of Prime Minister Eshkol discussed the Allon plan, which provided for the extension of Israel's political boundary to the Jordan River, the establishment of urban and rural settlements in the occupied West Bank, the annexation of the Gaza Strip, and the future of the Arab enclave—part of the West Bank—that was to be included in Israeli territory. The plan was rejected by King Hussein of Jordan, to whom it had been offered, but found support among political and military circles in Israel. Its stated purpose was to obtain "secure and recognized boundaries," a formulation that reflected the thinking of some of those

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responsible for Israel's 1948 boundaries, such as Allon, who was to remain committed to the new expanded map of Israel.

While the government was involved in extending its control over occupied territories, the public was debating the demographic consequences of annexation. Whatever their differences, all parties started from the fact that there were a million Palestinians in the occupied territories and that to take them in would mean increasing the Israeli population by a third. That would either transform Israel into a binational state, divided between Jewish and Palestinian citizens or change it into a two-tier society with Palestinians in a permanently subordinate role. Anti-annexationists, therefore, included those Zionists who wanted to go on living in a country that was exclusively Jewish, as well as other citizens who opposed the possibility of an Israeli Rhodesia.

Supporters of annexation argued, on the other hand, that the problem posed by the presence of a million Palestinians could be overcome either by encouraging large-scale immigration of Jews from Latin America, the Soviet Union, or the United States and/or by stimulating an exodus of Palestinians from the occupied territories. This, it was maintained, would not be done by force, but by the persuasion of circumstances—an ambiguous enough proposition that referred to possible attractions for Palestinians outside their homeland. The debate on annexation did not formally end; it was overtaken by accomplished fact: Israel's creeping annexation of the occupied territories. Yet the demographic problem remains. It was estimated by the end of 1975 that Palestinian Arabs and Israeli Arabs—those Palestinians who had remained in Israel after 1948—together constitute 35.7 percent of the population under Israeli rule. It is a situation that will continue to disturb those who fear the results of numerical parity.

Moshe Dayan, who was at first unenthusiastic about the Allon plan, soon became converted to it, but he has been more closely identified with Israel's economic penetration of occupied territories, notably with the policy of economic integration that included "open bridges" and "open borders." And it is the economic aspect of Israeli policy in occupied territories that I want to emphasize here, both because it has received the least attention in the media and because it is what most convincingly demonstrates the deeply rooted nature of Israel's interests in its de facto annexation.

It has been observed, in an assessment of economic policies in the West Bank and the Gaza Strip since 1967, that while "the Israeli Government did not conceive or attempt to implement any systematic, large-scale plan to alter the economic structure of the West Bank and the Gaza Strip . . . what happened after 1967 was more complex and no less profound than if such a master plan had actually existed." (*Benefits and Burdens*, by Brian Van Arkadie; Carnegie Endowment for International Peace; New York, 1977.) But what happened after 1967 was not the result of random events. The disruption caused by the fleeing of between 170,000 and 200,000 Palestinians from the West Bank and the Gaza Strip was compounded by transformations in the economies of both regions.

Exposed to Israeli market forces without benefit of protection, the economies of the occupied territory were readjusted to suit the needs of Israel. Prewar trade between Gaza and Egypt, and between the West Bank and Jordan, was fundamentally altered to Israel's benefit. While trade with Jordan was not completely cut off—hence "open bridges" and "open borders"—it was reduced in order to diminish the West Bank's dependence on Jordan. The trade that was allowed to continue with Jordan, and through it with the Arab states, was to Israel's advantage, since it encouraged the export of goods considered unfavorably competitive with Israeli products. Those especially pleased were the Israeli farmers, who constitute a strong political lobby and who have vociferously opposed the free sale of West Bank agricultural products in Israel. That the somewhat open door to Jordan permitted the continued circulation of Jordanian currency and the prolonged subsidization, with Israeli approval, of certain West Bank notables, only increased its value. And despite this opening to the East, by 1973 it was estimated that the West Bank and the Gaza Strip were obtaining no less than 90 percent of their total imports from Israel, while Israel obtained 2 percent of its imports from occupied territories. The occupied territories had become the second largest market for Israeli goods (with the exception of polished diamonds), coming after the United States and before the United Kingdom.

As early as 1968 plans had been made to coordinate the transportation, communication and utilities services of the West Bank and the Gaza Strip with those of Israel. Educational programs were introduced into occupied territories. In agriculture, where dependence on the Israeli economy was heaviest, Israel encouraged the planting of crops useful for its local consumption as well as for its export trade. Agricultural councils were set up to act as liaisons between the military and local farmers, and the Ministry of Agriculture, said to be the most helpful of all ministries to the military government, appointed a marketing officer who was attached to the military occupation staff. Farmers were persuaded to shift from such prewar surplus crops as melons and a few vegetables to sesame, sorghum, wheat, tobacco, beans and lentils—produce in short supply in Israel. In the Jordan Valley the cultivated area was greatly expanded to produce winter vegetables to export to Europe.

However, it was in the exploitation of cheap Palestinian labor reserves that the colonial nature of Israeli policy was most vividly exposed. At first cautious about admitting Palestinian workers into Israel, the authorities changed their minds as the needs of the expanding Israeli economy became evident. Between 1968 and the end of 1974, the number of Palestinians from occupied territory who worked in Israel grew from 12,000 to 78,000. According to figures obtained in 1973, 49.8 percent of West Bank and Gaza Strip wage laborers were employed in Israel. Between 1970 and 1973, years of rapid growth in the construction industry, 59 percent of the workers

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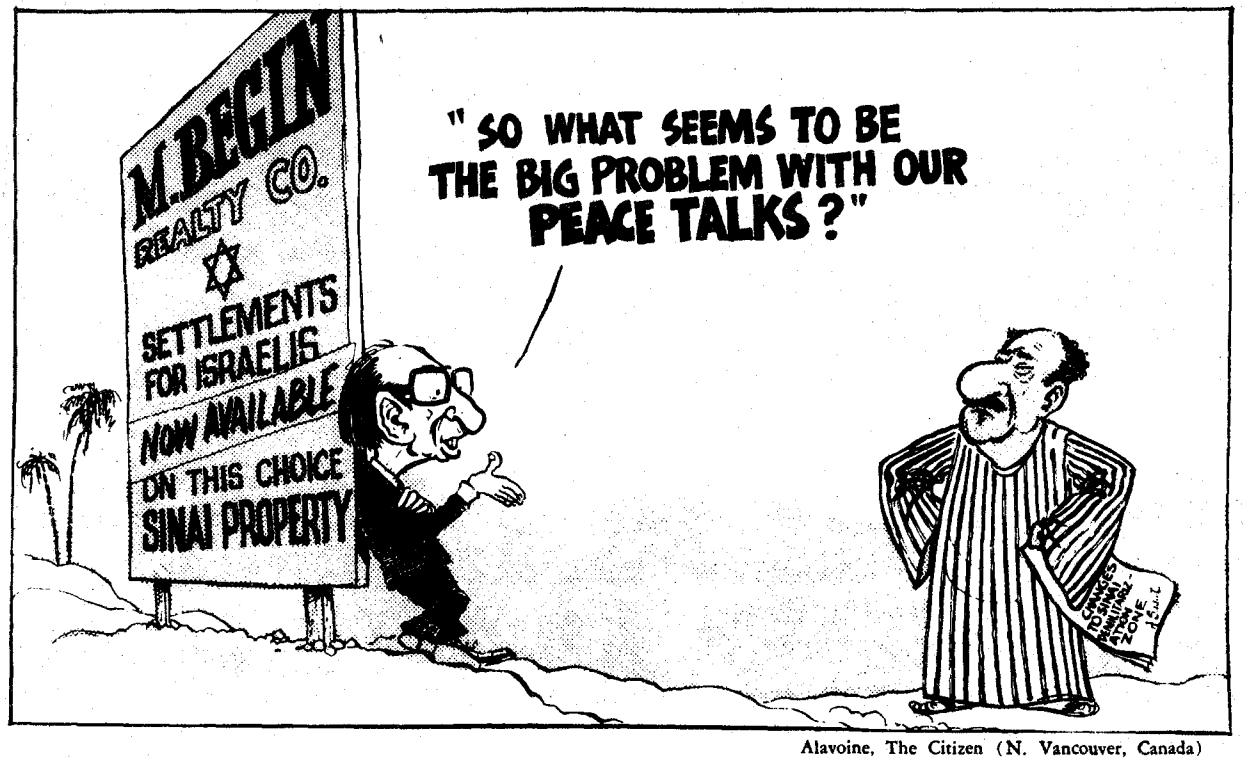
absorbed by that sector came from occupied territories. And by 1975, it was estimated, no less than 88 percent of workers from occupied territories were employed in manufacturing, agriculture and, particularly, construction.

Largely unskilled, Palestinian workers were offered training, but in various applications of manual labor that did not improve their position in the Israeli labor pool. Nor did it, for that matter, improve their ability to contribute to indigenous industrial growth in either the West Bank or the Gaza Strip. There, competition from Israeli firms that were protected by Israel's political and military presence, along with the absence of capital, a banking system or a money market, only added to the weaknesses created by the lack of trained personnel. But industrial growth in occupied territories was not an Israeli priority. And in fact, what light industry there was on the West Bank and the Gaza Strip suffered as a direct result of Israeli policy. Palestinian small farmers and shopkeepers, as well as artisans, found themselves unable to match the wages paid in Israel or to withstand the overall burden of the inflated Israeli economy. Small-scale manufacturers were likewise displaced when Israeli businessmen, taking advantage of the cheap labor there, subcontracted for textile, clothing, embroidery and furniture production in the West Bank. The boom in the construction industry attracted workers to West Bank quarries. Thus, former small entrepreneurs in occupied territories became wage hands, and expanded the already growing Palestinian working class. But what was characteristic of this proletarianization of Palestinian workers and part-time peasants, men and increasingly women as well, was that they were employed in and dependent on the Israeli economy rather than on the economies of either the West Bank or the Gaza Strip.

It is true that workers from occupied territories earned a higher income in Israel than they would have had they remained in the West Bank or the Gaza Strip, or under Jordanian rule. But Palestinian workers in Israel became the lowest paid and least privileged members of the labor pool. A report from the Israel Bank on the economic development of occupied territories, published in 1974, stated that "According to the raw data, there is a significant gap, which reached 50 percent in 1972, between the average wage of the Israeli salaried worker and that of his contemporary from the territories who works in Israel." The gap is even wider than that, however, since Palestinian workers do not benefit from the various insurance funds normally extended to Israeli workers. Moreover, the living conditions of workers from occupied territories attest to the hardship of their situation, whatever the statistical manipulations of their higher income yields may demonstrate.

Palestinian workers must obtain permits to sleep in Israel. Though frequently overlooked, this regulation has been applied against those caught sleeping overnight in places near their work—in cellars of buildings under construction, in the kitchens of restaurants, in the yards of farms, in orchards and other agricultural areas, as *Ha'aretz* reported in August 1972. One of the most flagrant cases of abuse, resulting in the death by fire of three workers in a mattress factory, was reported in the March 16, 1976 issue of *Yediot Aharonot*, one of Israel's two evening papers. The reporter, A. Egozi, told of the practice, apparently widespread, whereby workers from occupied territories are locked at night into their places of employment. This is done, he explained, for two reasons: to prevent the workers from wandering the streets and being picked up as vagrants, and to discourage the authorities from making midnight searches of the premises, looking for "underground laborers" who lack work and living permits.

If further proof of Israeli intentions in annexing the


M.BEGIN
REALTY CO.
SETTLEMENTS FOR ISRAELIS NOW AVAILABLE
ON THIS CHOICE SINAI PROPERTY
"SO WHAT SEEMS TO BE THE BIG PROBLEM WITH OUR PEACE TALKS?"

Alavoine, The Citizen (N. Vancouver, Canada)

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occupied territories is needed, one need only consider two distinct but related practices: the incentives offered Israeli firms to establish themselves in occupied territories, and the prevalence of land purchase there. As to the former, until the end of 1969, Israeli businesses were reluctant to move into occupied lands, preferring the opportunities offered by Israel's development towns. The situation changed when, in 1972, authorities began to weight the scales in favor of those willing to risk their capital in the territories. The incentives were considerable —loans were offered of up to 50 percent of the necessary working capital, lent at up to 9 percent interest, with the qualification that only 20 percent of the total capital needed for any commercial, manufacturing or service enterprise is to be provided by the borrowers. Government grants of up to a third of the investment in machinery and equipment and up to 20 percent of the investment in building and site development also became available, in addition to depreciation allowances and other privileges such as exemption from income tax for five years. Special provisions were made for foreign capital.

The matter of land purchase is far more explosive. Although Jordan forbids its citizens, on pain of death, to sell their land to Israelis, and Israel does not permit its people to buy such land, the Israeli Government has not felt itself bound by these prohibitions, whatever international law may say on the subject. The sale of land in occupied territories has proceeded apace, and in the spring of 1974 the Israeli press reported that the government had earmarked $3.6 million for the purpose—a figure about five times what was set aside for the same purpose between 1967 and 1973. In March 1976, it was disclosed that the Israeli Land Fund had spent $6.8 million for land in occupied territories. The Director General of the Israeli Land Fund, Ben Shemesh, is reported to have said that many of the "Arab inhabitants, living on the acquired lands, do not yet know that these lands are in the possession of the ILF. A considerable number of the land owners live overseas; they enacted transactions in their countries of residence. . . . The ILF has planted forests on land acquired in rocky areas; this has been done to validate land ownership rights."

At the least, the policy pursued by the Israeli Government makes nonsense of the contention that it has no intention of dispossessing Arabs from their lands. But considered as a whole, the policy followed over the past ten years demonstrates that Israel's presence in the occupied territories is not motivated by military considerations alone. The elaborate economic policy that has transformed the occupied territories into Israeli dependencies stems from a far more comprehensive plan that seeks to make *faits accomplis* of territories that have been annexed and integrated into the fabric of Israel. In this context withdrawal from these lands looms as a far more difficult problem than is currently assumed in public discussions about negotiations between Israel and Egypt. Withdrawal is not impossible—other nations have surrendered their colonies—but for it to occur in this case would require a profound political change in Israel. There is at present no evidence that this is about to take place. □

INDIANS FOR SOVEREIGNTY

THE RESERVATION OFFENSIVE

BRUCE JOHANSEN

In Maine, the Passamaquoddy and Penobscot tribes claim 5 million acres, basing their action on an alleged violation of the Nonintercourse Act of 1790. In South Dakota, the Oglala Lakota (Pine Ridge Sioux) plan a chain of tribal supermarkets. In Montana, the northern Cheyenne have canceled coal leases with multinational energy companies and enacted air-pollution regulations, and the Navajos are considering a sophisticated corporate tax. In the lush Yakima Valley of Washington, white farmers are told that hereafter they must obtain permits for irrigation water from the Yakima Nation.

These assertions of American Indian economic muscle, along with many more of similar nature have, during the last half dozen years, combined into a coherent doctrine: that self-determination (and in some cases sovereignty) is, for Indians, the only way out of the debilitating dependency and poverty which have become synonymous with life on many reservations. Such ideas are called "militant," but they are so in an ironically traditional way, for they are older than most of the treaties on which the assertion of economic rights are based. The form, and the language, of most of the 371 treaties signed by the United States with the native people within its borders carry the air of dealings between sovereign powers.

As long as the treaties lay dormant in forgotten archives, they drew little non-Indian comment. During the 1970s, however, a few regional treaty-rights conflicts —a notable one was over the salmon fishing in the state of Washington—sparked among the Indians a nationwide impulse to use the treaties to gain the land and resource base necessary for economic assertion. This, in turn, produced a resistance to the treaties from individuals and corporations whose holdings were thought to be threatened.

In almost every state where there are Indian reservations, but especially in the West, the treaty-rights issue

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has become politically important. In Congress, at least a dozen proposals to "reform" or abolish treaties are moving, somewhere, through the committee system. Indians, by necessity students of history, understand that the policies which herded them out of their ancestral homes were originally advanced as "reforms" by well-meaning non-Indians who thought they knew what was best for their "wards." Similarly, the General Allotment Act of 1887—which cost Indians two-thirds of their treaty-guaranteed land and laid the base for many of today's problems—was passed as reform legislation. This time, the tribes are insisting that they know best how to solve what non-Indians call the "Indian problem."

The issue of self-determination and sovereignty is complex, and means different things to different Indian and non-Indian groups. To the most traditional of Indian people, the concept means a jurisdictional control over one's destiny equivalent to that of a nation; last September, a delegation from the Iroquois Confederacy brought its own passports to a United Nations conference in Geneva, and the Swiss accepted them. To others, the idea carries connotations of jurisdictional power similar to that of a state within the United States; such was the thrust of recommendations by the American Indian Policy Review Commission which reported to Congress last summer. To still other Indian people, sovereignty is defined ad hoc, usually on the basis of treaty law—the right, for example, to harvest salmon, regulate reservation industry or charge a tribal sales tax on a reservation.

The modern revival of economic sovereignty emerged from a few isolated areas in the West during the late 1960s. Its dramatic aspects were readily seized upon by the mass media (influenced, no doubt, by the internationalized mythology of war bonnet and tomahawk): an occupation at Alcatraz; a cross-country march in 1972, which ended by occupying the Washington offices of the Bureau of Indian Affairs; the seventy-one day siege at Wounded Knee during 1973. What the media largely missed was that, behind these events, a historical idea was being revived. Each was underlain by the Indian's insistence on his right to control his land, and his life.

The first nationally publicized assertion of economic treaty rights in recent times occurred in Washington state, where Indians had been risking arrest, confiscation of their gear, and harassment by vigilantes for more than fifty years, until a series of federal decisions by District Court Judge George Boldt in the early 1970s reserved as much as half the state salmon fishery for members of treaty tribes. The decisions, upheld by the United States Supreme Court, were drawn from the 19th-century dictionary meaning of "in common with," wording used in the 1854 and 1855 treaties on the taking of salmon. At the same time, treaty Indians in Washington set up "smoke shops" which sold cigarettes (and sometimes liquor and fireworks) beyond the reach—and the taxes—of the state. Indian land is legally held in trust by the federal government and, like military bases, lies outside state jurisdiction.

By the late 1970s, other jurisdictional clauses of the treaties were being consulted by Washington Indians who, working on the precedent of the "fish war," began asserting various heretofore dormant rights. The Seattle office of the American Friends Service Committee reported in 1977 that most of the state's twenty-two tribes with land bases were considering tax codes, or had already developed them. That August, the Muckleshoots, a small tribe southeast of Seattle, announced a plan for a 2.5 percent sales tax, excluding prescription drugs and food purchased with food stamps. The plan went through and the Muckleshoots became the second tribe in Washington to enact a sales tax; the Quileutes on the Pacific Coast had done so in January 1977. The Muckleshoots also included in their proposal a .4 percent business and occupation tax on gross sales. The tribe had a revenue source near at hand, a suburban shopping center on reservation land but in the midst of non-Indian land that was being rapidly subdivided.

Meanwhile, larger Indian Nations were implementing more extensive tax codes. The Oglala Lakota, the second largest single one (with about 12,000 members) were levying taxes on land sales, land use, grazing permits, occupation permits, cigarettes and other retail sales and services. In 1975, the Oglala raised 92 percent of their tribal budget—$660,000 of $720,000—with tribal taxes. Reacting to the customary high prices set by non-Indian-owned reservation businesses, the Oglala in 1977 began planning four small, tribally owned shopping centers.

The Navajos, by far the largest Indian Nation inside United States borders, its population estimated at 150,000, have operated tribal businesses for years in competition with the older trading posts. The tribe recently designed a sophisticated tax code aimed at corporations which exploit the reservation's rich stores of coal, uranium and other natural resources. The value-added tax, intended to extract money from the wealthy corporations, rather than from poor Navajos, was drawn up with the assistance of Frank Ryan, a Blackfoot who specializes in tax codes for developing nations from his post at Harvard. Ryan's objective is to break down an economic system that in the past has drawn wealth away from Indian Nations, a "colonial" disability similar to what plagues many Third World countries. In another move to keep wealth within the Navajo Nation, the Navajos support their own water and electric utilities.

Another tribe with rich coal reserves, the Crow of Montana, has enacted a coal-severance tax. Like the Navajo, both the Crow and the northern Cheyenne (a coal-rich tribe that has voided coal leases rather than see its reservation strip mined) are considering air-and-water pollution laws that would regulate the operation of coal-fired electricity and gasification plants that energy companies have proposed on or near their land.

Across Puget Sound from Seattle, the Suquamish proposed in 1977 an eighteen-month building moratorium. This has caused intense conflict with local developers who had been building tract homes on and around the reservation to accommodate several thousand workers from the Navy's Trident Nuclear Submarine Base at Bangor, less than 10 miles from the Suquamish reservation. The building boom began after non-Indians had

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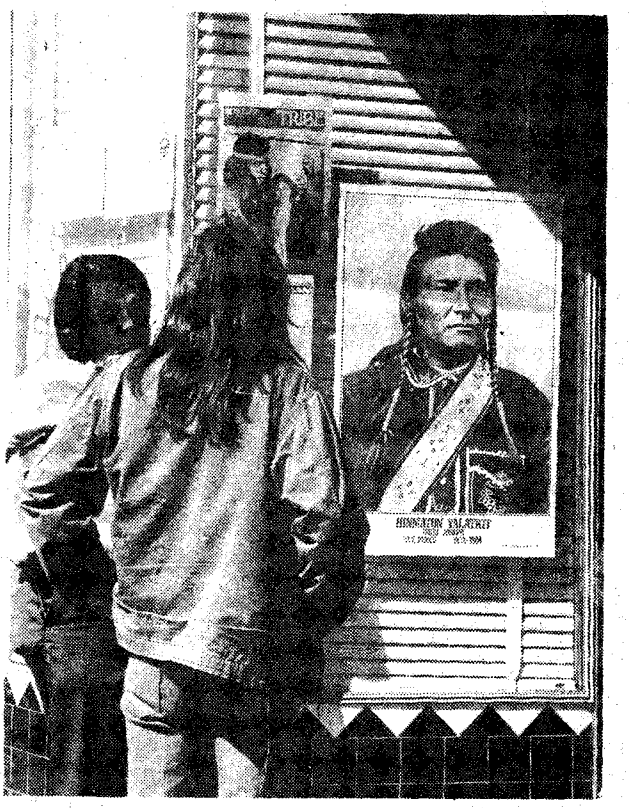
acquired about 5,000 of the reservation's 8,000 acres. The Suquamish, like many other reservations partly or totally carved into individual tracts by the 1887 Allotment Act, have had much of their land bought from under them during the last sixty years. Indians who sought public assistance would be told they could not get it if they owned land, and so the land was sold. On many reservations what remains is land that escaped allotment and is still held in common by the tribe. The Suquamish building moratorium is a device meant to help stop the erosion of land base, and the intrusion of an alien culture onto it. Developers won no friends on the reservation when a sewer outlet for a number of tract homes was built a few yards from a sacred tribal long house.

Across the continent, in the East, the land base is also an issue, but there many Indians have had to go to court even to be recognized as organized tribes so that they may sue for the return of land. Despite that obstacle, there have been several well-publicized land-claims cases in Maine, Massachusetts, New York, South Carolina and elsewhere.

Assertion of treaty rights provides more than the opportunity to rise out of a poverty that places Indians at the bottom of nearly every economic index maintained by the U.S. Census. It also inverts stereotypes. The metaphor of the "return to the buffalo" is often used in the West to symbolize escape from what Indians believe to be a colonial relationship. The buffalo were exterminated during the 19th century not only for their skins; they were killed as part of a government policy to starve the Indians into submission, to drive them into a reservation system where enforced dependence allowed non-Indians to characterize them as indolent, lazy, ignorant, drunken devils. The revival of economic assertion is a reminder that it was not always thus. It is a thought that must pass through the mind of the sober Indian who sells booze to non-Indians at a smoke shop in Franks Landing (near Olympia), Wash. The salesman is not only severing a colonial relationship—he is standing a caricature on its head.

Such changes have not sat well with non-Indian interest groups; each new economic assertion creates another group of offended whites. In the state of Washington, anti-treaty opposition spread from the commercial fishermen to reservation landowners and merchants, farmers in the Yakima Valley, developers of real estate, and the state itself, which loses tax money on every carton of cigarettes or bottle of liquor the Indians sell tax-free. The pattern is similar in other states: state governments with economic interests line up with groups of private citizens to agitate against Indians' treaty-based economic assertions.

In 1975, Howard Gray, a Seattle resident, spoke before a group calling itself Montanans Opposed to Discrimination. Since both Gray and his Montana hosts deplored the Indians' new demands, an anti-treaty organization, the Interstate Congress for Equal Rights and Responsibilities (ICERR), grew out of this meeting. The next year it held its first convention in Salt Lake City,



Outside the Indian Center, San Francisco Bay Area

with ten state chapters represented. By the end of 1977, the congress had chapters in at least twenty states and affiliations with groups of different names but similar purpose in at least six others.

Politicians in these states have shown themselves responsive to this growing, well-organized pressure group, which works much in the manner of the larger National Rifle Association. Last year Robert Bogensburger of Mt. Vernon, Wash., quickly raised $100,000 in pledges for a petition campaign to remove from the bench Judge Boldt of the salmon disputes, who has become the major target of the ICERR. In August, Washington Atty. Gen. Slade Gorton called a meeting of Western state attorneys general, the major purpose of which was to organize against Indian rights. State tax assessors of the region met at about the same time for the same purpose.

A month later, the Western Conference of the Council of State Governments called for "an end to Indian sovereignty." It advocated giving the states authority over reservation land use and prohibiting Indian governments from taxing non-Indian-owned businesses established on the reservations. Indian police and court jurisdiction over non-Indians inside reservations would be ended, and states would be allowed to tax Indian land and businesses. The proposals were based on the historically fictitious belief that "the United States has always been a country of equals . . . with no individual or group subjected to subordinate or special rights."

Attorney General Gorton had used the same argument, coining the word, "supercitizenship," at a 1977 hearing by the U.S. Civil Rights Commission in Seattle. Mel Tonasket, who has been president of the National Congress of American Indians, replied somewhat tartly

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by asking Gorton if he would "be willing to trade places with any of the 'supercitizens' on my reservation and make less than $2,000 a year and have your children taken away by members of another race."

At the federal level, the cry of "supercitizenship" has been used to justify a number of treaty modification or abrogation bills introduced by Senators and Representatives from states where the anti-treaty movement is most active. The most far-reaching bill was introduced by Rep. Jack Cunningham (R., Wash.). Called the "Native American Equal Opportunity Act," it would abrogate all treaties and disperse Indians throughout the dominant culture. The bill revives a 150-year attempt to deprive the Indians of their hold on the land, as well as to obscure their identity and make "Americans" of them. However, Cunningham maintained, for the record, that he was acting for the Indians' good.

The abrogation act contains a clause that seeks to evade the cost—estimated at $250 billion to $500 billion by Sen. Henry Jackson, chairman of the Senate Interior Committee—of compensating Indians for abrogated rights and land. It is worded with the finesse learned in a century and a half of Indian affairs. Referring to the existing treaties, it says that Congress shall "provide that there be no taking without just compensation of any property right *specifically created for a particular individual by such treaty.*" The wording excludes compensation for commonly held land. Despite the pressures of allotment, more than half of most Indian reservations are still held communally; in Washington state, the figure is 75 percent.

Another Congressman from Washington, Lloyd Meeds, has introduced legislation to restrict Indian water rights and legal jurisdiction. Many of his proposals resemble the recommendations of the Western Council of the Conference of State Governments. Meeds, who will retire from Congress this year, has long styled himself a friend of Indians, but his advocacy of treaty rights nearly cost him the 1976 election from his district, which lies between Seattle and the Canadian border. Even as he appeased the opposition with anti-treaty legislation, he accommodated his liberal convictions to the action. As vice chairman of the American Indian Policy Review Commission, Meeds submitted a 102-page dissent to its recommendations for increased self-determination. He wrote: "The quickest and most certain way to destroy that uniqueness [of Indian Nations] is to immediately implement all the recommendations of this report . . . the backlash of the dominant culture would be swift and sure." Picking up an echo from Southeast Asia, Meeds discovered Indian Nations must be destroyed to be saved.

Meeds also echoed another liberal "friend of the Indian" who, almost exactly 150 years earlier, had perhaps unwittingly laid the legislative groundwork for the Trail of Tears, during which about 4,000 of 14,000 Cherokees died on a forced winter march from their Georgia homeland to Indian Territory, now Oklahoma. In the early 1820s, Thomas McKenney, federal superintendent of Indian trade, had watched the Cherokees establish a prosperous economy which included 2,000 spinning mills, twenty sawmills and 22,000 cattle. The Cherokees in 1827 created a constitutional republic modeled after, but independent of, the United States and Georgia. Such intimations of sovereignty infuriated Georgians, who sought Cherokee land and (after 1829) the gold within it. In 1829, President Andrew Jackson enlisted McKenney to "sell" Congress on the removal of the Cherokees and other Indians living east of the Mississippi. McKenney established the New York Board for the Emigration, Preservation and Improvement of the Aborigines of America. He touted removal of the Indians as a humane policy whereby they could preserve their identity on new land. The Cherokees, said McKenney, must leave Georgia for their own good. They must, he said, "remove—or perish." They were removed and at least a quarter of them perished.

Fifty-nine years later, the allotment act was produced by another wave of liberal concern for Indian welfare. After publication of Helen Hunt Jackson's *Century of Dishoner* (1880), a Congressional committee decided that the solution to the "Indian problem" was to make landowning farmers—Americans in the Jeffersonian image—of them. By the time the allotment act passed, it contained a provision throwing open to settlement treaty-guaranteed land "left over" after allotment. In the following ninety years, 100 million of the 150 million acres of reservation land changed hands. A century after the preparation of allotment, and a century and a half after the passage of the Removal Act, a Trojan horse, full of the friends of the Indian, is being drawn up to the reservation gates. But the Indians can no longer be fooled by proposals for their benefit that somehow always leave them more naked than before □

SHUTTLE DIPLOMACY FOR NAMIBIA

PATRICK LAWRENCE

United Nations

Whereas the so-called Anglo-American initiative on the transfer of power in Rhodesia appears beyond revival in its current form, another component of Washington's post-Kissinger African policy is now undergoing its crucial test. Secretary of State Cyrus Vance and other Western Foreign Ministers met in New York on the weekend of February 11-12 with South African Foreign Minister Roelof F. Botha on the question of Namibia's independence from South Africa. U.S. officials also met with leaders of the South West African People's Organization

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(SWAPO), the movement recognized by the U.N. in 1966 as the legitimate representative of Namibia's estimated 900,000 blacks. (The white population is 90,000.)

Because South Africa refuses, as it has for years, to negotiate with SWAPO on any form of power transfer, the Western officials were required to shuttle the bargaining positions of the two antagonists back and forth in a series of separate meetings. Such logistics might be seen as a graphic illustration of the role Washington has sought in a negotiated end to South Africa's fifty-eight-year occupation of Namibia. That occupation was first condemned by the U.N. in 1966 and declared illegal by the International Court of Justice in 1971.

Despite an unexpected walkout by the South African delegation, officials connected with the U.S. mission still express "cautious optimism" regarding future talks, but virtually all parties concerned viewed the weekend sessions as probably the last chance for the kind of "moderate" settlement Washington has set as its goal ever since Dr. Kissinger's April 1976 policy speech in Lusaka, Zambia. Before the negotiations, both U.S. officials and SWAPO spokesmen at the United Nations expressed this outlook. Western representatives are now scurrying to salvage their efforts. As for Pretoria, the measures it has taken for a kind of "internal settlement" indicate that it, too, saw the present activity as the last chance for Western mediation on Namibia.

The current Western initiative was launched last spring, when Security Council members were faced with another diplomatic offensive from the African group at the U.N. The Carter administration, in particular, wanted to avoid negotiating any resolutions placed before the Security Council that would once again condemn South Africa's occupation of Namibia and call for arms embargoes and economic sanctions. It was extremely important, in the State Department's view, that Andrew Young come off well in what Washington was advertising as its about-face on southern Africa.

But the African bloc had already confronted the council with four draft resolutions that the United States and its allies would be forced to veto if they were brought to a formal vote. Accordingly, the United States, Great Britain, France, West Germany and Canada offered an alternative solution: a "Declaration of Principles" in lieu of a formal condemnation. Along with that document, but not included in it, Western delegates promised to launch a diplomatic effort in Pretoria to persuade South Africa that it should acknowledge a timetable for elections in which SWAPO would participate under U.N. supervision. The declaration was based on the requirements of Security Council Resolution 385, passed in 1976. SWAPO has always followed that resolution in demanding South African withdrawal from the territory and free elections under United Nations supervision and control.

The approaches to South Africa began in May and were expected to end in this month's meetings. In the interim, there were several rounds of negotiations, ostensibly aimed at convincing Vorster's government that it should compromise on such key issues as Walvis Bay, Namibia's only deep-water port, which Pretoria claims as its own, and the withdrawal of South Africa's civilian administration and its 40,000 to 50,000 troops before elections are held.

The mood among African delegates at the U.N. when the démarche began last spring enabled Young to demonstrate the sincerity of the Carter administration in presenting a new United States position on southern Africa. Just prior to the recent meetings, the African group agreed to hold back two more resolutions in the Security Council on South Africa, pending the outcome of the current talks. But from the first, Africans concerned with the Namibian issue have been skeptical of Western motives. "At the moment, the United States remains close to South Africa," says Ben Gurirab, head of SWAPO's Observer Mission at the U.N., "despite its verbal condemnation of South Africa's illegal occupation of Namibia."

There seems to be abundant reason for such pessimism. The content of the talks held thus far has remained fairly secret, but there are signs that the Western contact group has been hedging on a number of key issues. Donald McHenry, Andrew Young's assistant for African affairs, has said privately that the group has persuaded Pretoria to compromise on sixteen of twenty bargaining points. But such numbers are misleading. South Africa has apparently modified its position on a number of minor points, and the remaining issues, the really major stumbling blocks to a settlement, are sticky. SWAPO's position is firm: it insists upon free elections in Namibia under U.N. supervision and control, and the preconditions for such elections are those required in Resolution 385. South Africa, however, has yet to show any desire to meet them. Therefore, SWAPO leaders and others at the U.N. believe the U.S.-led initiative to be motivated, at least in part, by a desire to bypass the conditions outlined in 385—even though the United States and other Western council members voted for it—and to impose on the major issues "compromises" that could only favor South Africa. Even though negotiations seem to have backfired temporarily, such compromises are likely to remain the West's objective.

Walvis Bay and demilitarization are two issues on which the contact group has apparently made little progress. South Africa officially annexed the port area in August 1977—after the Western bargaining initiative had been launched. In a recent interview in New York, SWAPO's Gurirab said that South Africa "is now in the process of making functional the administrative machinery to tie Walvis Bay to Cape Province." The black official then shrugged when asked if his organization was concerned about South Africa's unwillingness to negotiate the status of the port, which is also the center of the territory's industry and transport system. "I am in no position to say what South Africa will do," he said. "But we will continue to regard Walvis Bay as an occupied part of Namibia."

The question of military occupation is more complex. A U.N. consultant last year estimated the number of South African troops active in the territory at 50,000.

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They have been fighting a slowly increasing guerrilla war in the northern and north-central regions of the territory, where SWAPO support is strong and where the lay of the land favors armed insurgency. Compounding this, South African troop strength has become more concentrated along the northern border of Namibia since the Popular Movement's victory in Angola in 1976. It is unlikely that Pretoria will be willing to pull troops off this border, which it still sees as the northern defense position of the Republic of South Africa.

It is believed, accordingly, that the Western contact group is proposing a number of compromises on this question—none designed to meet 385's requirement of a full military withdrawal. One such is said to permit a specified number of South African troops to range along the Orange River, Namibia's border with South Africa; another is thought to call for a South African strength of 2,500 or 3,000, surrounded by a U.N. peace-keeping force and confined to a specified area near Windhoek, the territory's capital. SWAPO has gone so far as to accept the presence of 1,500 South African troops, but with stringent demands for their placement and control. But even this was less than Botha was apparently led to expect.

Troop reduction is not troop withdrawal, and SWAPO is understandably wary of any South African presence during elections and the transition to independence. Nevertheless, during the recent round of shuttle sessions, U.S. mission officials were expected to press SWAPO, not South Africa, for a compromise. It was for this reason that Botha's sudden withdrawal from the talks was such a surprise to Western participating delegations.

In a recent speech at the Council on Religion and International Affairs, McHenry detailed the conditions that Washington sees as necessary for elections to be held. Military withdrawal was notably absent from his demands. McHenry also cut an important corner on the question of elections, saying that, in the U.S. view, South Africa could not be left with "exclusive control" during the election period. In the same speech, he noted the necessity for "a large U.N. presence," but said nothing about U.N. supervision and control of the elections.

For its part, South Africa has been following what Gurirab calls "a two-track strategy" in Namibia. It has been taking part in talks with the Western Five, as the contact group is called, while preparing for an internal settlement with government-picked, tribally based "leaders." At the contact group's urging last year, South Africa discontinued the constitutional conference that was intended to form an interim government without SWAPO participation and to hold elections under open South African control. But the South Africans have been going ahead with provisional arrangements to hold elections on their own by the end of this year, if the Western five do not produce a settlement. "South Africa has remained committed to the internal solution," Gurirab says. "It is not really committed to the talks with the five, nor to cooperation with the U.N."

Setting aside the rhetoric of change, there has been little apparent alteration in the U.S. position on the minority regimes in southern Africa. The Carter administration's position toward the liberation movements has remained at best ambiguous. Washington hopes that in Rhodesia and Namibia political power will pass to "moderate" regimes, much like those that would emerge from internal solutions designed in Salisbury and Pretoria. The United States envisions free-enterprise economic systems that would not change hands, even if the nominal instruments of power did so; the development of black entrepreneurial classes, continued Western investment without nationalizations. But unlike Prime Ministers Smith and Vorster, the State Department recognizes that such settlements are worthless unless they elicit the support of internationally acknowledged liberation movements. Certainly, it is not out of great allegiance to SWAPO or the Patriotic Front that Washington has continued to attempt negotiations with them. "I have never seen a situation where you can have a settlement and don't include the guys who have the guns," McHenry said recently. Washington seems to regret that, even though it is apparently the administration's only operating principle.

Privately, McHenry is reported to have said that he is disappointed by what he views as SWAPO's "intransigence"—i.e., its unwillingness to negotiate the requirements of Resolution 385. He has complained, according to an informed source, that after the U.S.-led contact group had made proposals on South Africa's partial demobilization, for instance, "there are no counterproposals—there is nothing to talk about." South Africa's abrupt withdrawal from the discussions was undoubtedly a shock to McHenry and the other negotiators. It is not now clear whether the South Africans will be willing to meet with them again.

There are signs that Washington's solution to this may be to isolate SWAPO diplomatically, with a view to abandoning it as a necessary party to legitimate negotiation; and then either stepping aside or tacitly supporting South Africa while it implements an internal solution. That may well be the purpose of portraying SWAPO as the party unwilling to compromise, even though it has done so to a far greater extent than South Africa. After the mid-February talks ended, British Foreign Minister David Owen still maintained that the Western plan was close to what the South Africans were asking. An editorial appearing in *The Washington Post* in December, when the recent talks were first planned, complained that SWAPO "seems to be the chief obstacle standing between Namibians and a freely chosen government of their own." The *Post* editorial also implied that SWAPO's constituency was ethnically determined and that the movement has resisted the idea of elections for fear of losing them.

The *Post* is demonstrably wrong on all three counts, but its assessment may not be far from that of negotiators involved in the Kissinger-style shuttle in New York. The implications of such a view are obvious: that SWAPO should accept the conditions advanced by South Africa through its economic allies. But is this, in turn, very far from the sort of moderation Kissinger began to work for in his final days as Secretary of State? □

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THE FEDERAL INITIATIVE IDEA

MICHAEL NELSON

Conventional wisdom has it that the American public is "turned off" from government and "dropping out" of politics. The evidence produced is familiar: voter turnout is low and getting lower; the people have withdrawn their confidence from President and Congress; 1960s radicals are selling insurance and plugging ESP, etc. Not surprisingly, "alienation" is the catchword among political sophisticates.

But as so often happens, conventional wisdom is here at odds with the facts. Even as the trend lines for voting and most other forms of political participation continue to fall, another activity is on the rise. "More and More Voters Write Laws" read a recent front-page headline in the Sunday *New York Times*. The reporter, Les Ledbetter, had found that: "Across the nation, in a manner and number not seen before, the ballot is increasingly being used for recalls, initiatives, referendums and constitutional amendments that were once left to local legislatures."

In the past fifteen months alone, initiatives produced a sunshine law in Florida (the seventh state to pass such a law by initiative), returnable-bottle statutes in Michigan and Maine, a local-option fluoridation law in Utah and an Arizona plan for judicial selection, to cite just a few examples. (The initiative allows citizens to propose laws by petition and have them voted up or down in general elections; referendums give voters a chance to accept or reject laws already passed by their legislatures.) A nationally publicized recall election removed Wisconsin Judge Archie Simonson from office after he let a convicted rapist off lightly because he thought the crime a "normal reaction" to women's lack of "modesty in dress."

Thus it was all but inevitable that someone would come up with the idea of extending the direct legislation principle to the federal government. As it happened, three people came up with it—John Forster, Bill Harrington and Roger Telschow, who together have launched an organization called Initiative America. It was perhaps less predictable that they would find an eager and able sponsor strategically placed on the Senate Judiciary Committee's Subcommittee on Constitutional Amendments. But they did, in the person of Sen. James Abourezk (D., S.D.), with bipartisan co-sponsorship from Mark Hatfield (R., Ore.) and Mike Gravel (D., Alaska). As for getting prompt Senate hearings on the proposal, that was an outright long shot. It came about last December.

Initiative America emerged from one of those late-night conversations that pervade political conventions of every stripe. Telschow, Forster and Harrington, three delegates to a Consumer Federation of America meeting in Washington, D.C. last February, were swapping stories about the state initiative campaigns they had been involved in the year before, when suddenly it occurred to them: why not try to have Congress pass a constitutional amendment allowing direct legislation at the federal level? The three agreed to stay in Washington for as long as it took to achieve that goal, working full time on a volunteer basis.

That commitment reflected a seriousness appropriate to the task. The great paradox of modern American politics is that, despite our history of ever expanding democratic rights—to vote, to speak freely, to choose officials, and so on—Americans feel less in control of their government than perhaps ever before. Not only is voter turnout down but so also is confrontation-style politics. The rising incidence of initiative use in the states and cities seems rooted in the fact that it combines the best qualities of both the confrontation (its directness) and the ballot (its legitimacy). As a safety valve, if nothing else, it has proven effective in situations where legislatures had fallen prey to special interest domination of issues that were of broad concern.

Initiative America's strategy was suitable: draft a proposal, sell the idea to a sponsor, and only then go out to organize around the country. Previous efforts, notably those of California's People's Lobby—that has been active in direct legislation campaigns—had tried to reverse the last two steps and gone nowhere. In fact, no direct legislation amendment had ever been introduced in Congress.

The proposal that Harrington, Telschow and Forster drafted was constructed carefully, with an eye to making it as palatable as possible to legislators. It was limited to the initiative ("the most creative, most positive, and most useful" of the direct legislation tools, according to Forster) on the theory that an amendment that also permitted referendums and recalls would seem too direct a challenge to Congressional competence. Initiatives to declare war, call up the militia, or amend the Constitution were excluded. Also, like any other legislation, initiatives voted into law would be subject to judicial review and Congressional repeal, though the latter would require a two-thirds vote of each house during the first two years after adoption.

Within these limits, here is how the national initiative amendment would work:

Citizens initiating a new law would record their proposal with the Attorney General, who would prepare the title and summary of the legislation to appear on the petitions. They would then have eighteen months to collect valid signatures equal in number to 3 percent of the votes cast in the most recent Presidential election (at present, that would be 2.5 million). In addition, to ex-

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clude initiatives of mainly local concern, that 3 percent requirement would have to be met in at least ten states.

Once the signatures were collected, the Attorney General would direct state election officials to check their validity. (In Washington state, for example, it costs about 20¢ to check each signature.) Because the requirements for a "valid" signature are so technical, initiative proponents would have to expect 1 million or 2 million to be tossed out. In effect, then, the 3 percent requirement would mean getting 4 to 5 percent.

Finally, when enough signatures checked out, the proposed law would go on the next national election ballot. If it received a simple majority, it would take effect thirty days after the election.

"Some people are disappointed when we describe all the difficulties involved in getting an initiative on the ballot," Harrington said, "but the purpose of the amendment isn't to replace Congress with a direct democracy. It's just to add another check to the checks-and-balances system—in this case, the people, who are the ultimate source of political authority anyway."

"Another reason for making it difficult is to prevent special interests from dominating the process," Telschow added. "Right now these groups have an unequal voice in Washington because they can afford to hire full-time lobbyists who know the ropes. But they wouldn't thrive so well in the open. In fact, the major function of the initiative is to give citizens a way of busting up the log-jams that develop when special interests are able to prevent legislation that a strong majority of people want from getting passed by the legislature."

The amendment drafted, Initiative America went looking for a sponsor. After asking around, they decided that Senator Abourezk would be a likely candidate. They were right; Abourezk is a great believer in the initiative —his own political career began in South Dakota with a successful initiative drive that he led in defense of the state's consumer-owned rural electrification system. On July 11, he and Telschow held a joint press conference to announce that he would be introducing the initiative amendment in Congress that day.

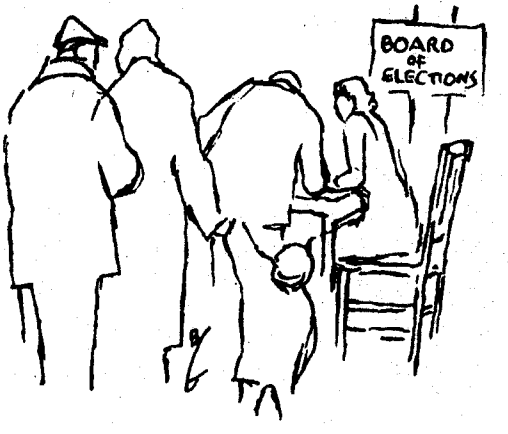
Neither Abourezk nor Initiative America expected the amendment to go very far in a hurry, but they got two immediate breaks. First, George F. Will wrote a nationally syndicated column about the proposal. A conservative, he was highly critical, but it developed that many of his readers were not. Congressmen started to get letters from back home, supporting the proposed amendment, and local Initiative America chapters were formed in more than half the states. Sen. Birch Bayh (D., Ind.), chairman of the Constitutional Amendments subcommittee, agreed to hold hearings in December, a decision which drew more fire from conservatives. James J. Kilpatrick, for example, wondered in his column how an amendment that was such "nonsense" had been moved up ahead of other, more meritorious proposals on the subcommittee's agenda. Like Will's, Kilpatrick's broadside was music to Initiative America's ears. The two days of hearings generated two kinds of argument: philosophical and empirical, both worth examining.

Abourezk raised the philosophical issue in his opening statement. "In one way or another," he said, "the debate about the voter initiative always comes down to whether politicians trust the American people sufficiently to allow citizens the right to vote directly on issues."

The negative case was made by political scientists on both ends of the political spectrum. Peter Bachrach of Temple University, speaking from the Left, maintained that "this resolution incorrectly presupposes that the American people are sane enough to make rational judgments on complex issues. They're not; they haven't had the opportunity to be politically educated. As a result, the people are ignorant and irrational when it comes to the simplest kinds of issues." Thus, Bachrach argued, "the issues the elite will present to the masses in initiatives will be 'hate issues'—anti-labor issues, race issues, anti-sex issues, and the like."

Peter Fish of Duke University, who testified at the suggestion of conservative Sen. William Scott (R., Va.), shared Bachrach's fear that most initiatives would involve "emotional issues" and that voters would have trouble responding intelligently to them. Further, he thought a national initiative would be a "conflict stimulator," unconducive to "stable government."

Fish also raised the hallowed "intentions of the framers" argument, pointing out that those had not included direct democracy in any form. Rep. James R. Jones (D., Okla.), who is co-sponsoring the amendment in the House, gave the predictable retort: times have changed. "The central problem the framers faced was that the federal government was too weak. . . . Today, however, we face the opposite problem. . . . Today it is the individual citizen who lacks sufficient power to create national policy." Telschow added for Initiative America that



not only had the framers not intended citizen-passed laws, "the right for women and blacks to vote was also left out of the first Constitution, as were many other present-day rights." But political scientist Henry Abraham of the University of Virginia, once an opponent of the initiative, made what was perhaps the most telling response. Though the Constitution's authors had meant for Congress alone to make laws, he conceded, today "law—or if one prefers, policies *cum* law—is increasingly made and applied not only by Congress but by the Chief Executive; by the host of all-but-uncontrollable civil servants in the executive agencies and bureaus; and

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by the judiciary. . . . Why not, then, . . . the people?"

Rep. Walter Fauntroy of the District of Columbia took on the "hate issue" argument. "I honestly doubt that any of the civil rights laws of the past twenty years would have passed without the support of the American people. I have great faith in them." In November, the District voted by 83 percent to incorporate an initiative procedure into the city's government.

Still, the "yes it would, no it wouldn't" philosophical debate proved far less useful as a guide to sensible evaluation of the proposed amendment than reports the subcommittee heard on the actual experiences of the twenty-three states that allow initiatives. For once, the old idea of the states as laboratories for the nation was brought to life in a sensible way.

California, as the nation's largest and most diverse state, provided a particularly instructive example. California has permitted initiatives since 1912. In the sixty-five years since then, an average of 4.5 initiative proposals per election have gone on the ballot, of which 1.3, or less than 30 percent, were approved by the voters.

As Larry Berg of the University of Southern California put it, this is hardly the "lawmaking binge that some critics of the initiative amendment predict will occur if the process is adopted nationwide." Further, California's experience seemed fairly common in this regard. Representative Jones reported that in Oklahoma fewer than one-fourth of the sixty-nine initiatives that had made it to the ballot since 1907 were passed by voters. In Washington, according to state election supervisor Donald Whiting, only eighty-four of the 407 initiative petitions filed with the Secretary of State since 1912 had attracted enough valid signatures to qualify; of these, forty were eventually rejected at the polls.

Whiting also presented an analysis of the seventeen initiatives that have appeared on the Washington ballot since 1970. Contradicting the theory that initiatives tend to be either hate issues or special-interest-generated, he concluded that "these measures were all substantial questions of public policy, . . . seldom the product of a single, special-interest group, and none was frivolous or inconsequential." In 1977, for example, Washingtonians voted "yes" to a repeal of the sales tax on food, and "no" to repealing a tax increase on gasoline.

Reviewing this testimony, Harrington concluded that for Initiative America "the experience of the states is really our strongest argument. When opponents of the national initiative say that political extremists will dominate, we can point to the states, where this hasn't happened. When they say that initiatives will clog the ballots, we can show that it has never occurred. When they say that people can't be trusted, we can point out that more initiatives are defeated than passed. Citizens have used this tool with remarkable restraint."

Getting the idea, finding a sponsor, winning the hearings—all were remarkable successes for Initiative America in its first months of existence. Establishing a sound philosophical and empirical case was another.

Ultimately, though, its chances for success depend on how well the idea catches on in the country. Respondents to a recent Caddell poll favored the idea by a margin of better than 2 to 1, and a startling 74 percent said that they would be "more inclined to go to vote if they could vote on issues as well as candidates. Abourezk reports that he has been approached by several candidates for Congress who want to champion the amendment in their 1978 campaigns. And it is rumored that if Sen. Orrin Hatch (R., Utah), decides to run for President in 1980, he may make it an issue. (Officially, it's, "I haven't made up my mind," on both counts.)

Meanwhile, Initiative America's leaders are touring the country in a twelve-year-old school bus they bought from Rappahannock County, Virginia, trying to generate grass-roots support. In one recent swing through the Midwest, Forster spoke in 135 cities and gave scores of radio and television interviews.

The public relations aspect of their enterprise is a little tricky. Wooing Congressmen, Initiative America has stressed the innocuous nature of the amendment, minimizing any threat it might pose to Congressional control of the lawmaking process. This was both necessary and persuasive on Capitol Hill, but it will be hard to stir up enthusiastic citizen support unless the sponsors can persuade people that their amendment will make a major difference in the political system. Already, People's Lobby has criticized the proposal because it "falls short of its mark."

One step essential to securing liberal support will be some assurance that both sides in an initiative controversy will be assured a way of getting their messages across to voters, lest moneyed interests dominate. Noting that "information is the currency of democracy," Ralph Nader proposed that the implementing statute for the amendment (which he endorsed) should dictate "equal access to the mass media." No state that accepts initiatives does do this now, but most of them provide a reasonable alternative: information packets containing arguments from either side that are mailed to every registered voter by the state government.

A second obstacle is purely Washingtonian. Initiative America expected that other public interest groups would rally behind them, but they have not. A plausible, if cynical, explanation is that public interest lobbyists are like other lobbyists in at least one respect: their importance within their organizations is a direct function of their proximity to the scene of the action. Should the arena broaden to include the entire electorate, their own status would decline.

The final obstacle is the amendment process itself. For one thing, there will undoubtedly be quibbling over the amendment's details, even if the general principle is accepted. Suggestions were made at the hearing to raise the petition requirement to 4 or 5 percent, and extend the minimum-state requirement to anywhere from twelve to twenty-six. Abourezk not only conceded that these issues are negotiable but said that he is considering broadening the amendment to include referendums.

Finally, amendments to the Constitution require a two-thirds vote of each house of Congress and ratification by three-fourths of the states. That normally happens only when a broad consensus forms, and that takes time. But Telschow, Forster and Harrington say they have that time, and that they will give it until their cause prevails. □

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BOOKS & THE ARTS

Making Some Mind of What Was Only Sense

THE COLLECTED POEMS OF HOWARD NEMEROV. *By Howard Nemerov. University of Chicago Press. 516 pp. $20.*

ROBERT B. SHAW

What makes a man write a poem is a question which admits of no easy answer. My own initial question, prompted by Howard Nemerov's *Collected Poems,* is a related one, perhaps equally mysterious. What makes a man who has written a poem write another, and another, and another. . . ? This collection runs more than 500 pages, comprising nine volumes published over the last thirty years. Few of Nemerov's contemporaries can match his copiousness; one thinks back for comparison to the awesome productivity of Tennyson or Browning, or more recently that of Stevens and Yeats. The Victorians were at least assured of having a reading public to address; in our own time and place there would appear to be little incentive to be so prolific.

When a poet writes a lot nowadays one imagines that his impetus must come ever more decidedly from within. And the nature of that impetus must vary in character, if not in intensity. For Sylvia Plath and Anne Sexton, poems came faster as their intolerable emotions required more frequent purgation. For the later Wordsworth, by contrast, composition became a mechanical routine, disconnected from any emotional urgency, a passionless habit, like a daily walk to the mailbox. I do not think that Nemerov's extraordinary fluency can be traced back either to unbearable passions or to a need to fill the gap left by their absence. If he is obsessive, his obsession is like those which activated Yeats and Stevens; it is the prompting of a passionate intellect that leads him to write, the drive of a mind devoted to a set of ideas both irreducible and endlessly applicable. He may justly feel that he has in 516 pages barely scratched the surface of his chosen terrain.

The great simplicities, the essential themes, sound trite in summary, and the challenge to the poet is to insure that they will not sound trite when he invokes them in his poem. Nemerov repeatedly meets this challenge in exploring the classically problematic relationship of the self to the world, of the perceiving eye to the objects perceived. To what extent, he repeatedly wonders, is the world we see our own creation? Is design (meaning not merely pattern but purposefulness) truly present in the universe, or have men deluded themselves in discerning it there, struck a precarious truce with anarchic nature by projecting onto it the mind's rage for order and significance? And in either case, how is the function of the poem to be conceived? Is the poem a mirror reflecting the appearances of the world in responsible detail, or is it a window, a transparent medium through which we may see, perhaps, some reality beyond the usual appearances that hem us in? Or might it begin as the one and with care and luck become the other?

Nemerov never fully unravels these aesthetic and metaphysical knots. They provide him the material for endless reflection. "Reflection," with its possibilities as image and pun, is a favorite word of Nemerov's, one of whose solider volumes was entitled *Mirrors and Windows.* He prefers the spelling "reflexion," which gives perhaps an additional punning facet to the word. It means for him not random musing but a strenuous mental exercise: as an athlete might flex his muscles, he takes the occasion of writing a poem to give his mind a workout.

A key episode in Nemerov's argument with himself over his favorite questions comes in "The Blue Swallows": the poet delightedly watching the configurations made by the flying birds becomes aware of how his mind "Weaves up relation's spindrift web,/Seeing the swallows' tails as nibs/Dipped in invisible ink, writing. . . ." At this point skepticism bursts in:

> *Poor mind, what would you have them write?*
> *Some cabalistic history*
> *Whose authorship you might ascribe*
> *To God? to Nature? Ah, poor ghost,*
> *You've capitalized your Self enough.*

This killjoy voice proceeds to reduce the scene to "The real world where the spelling mind/Imposes with its grammar book/Unreal relations on the blue/Swallows." But the poet isn't content to let reductive rationalism have the final word. In the last lines he addresses the birds whose darting paths provoked his speculations:

> *O swallows, swallows, poems are not*
> *The point. Finding again the world,*
> *That is the point, where loveliness*
> *Adorns intelligible things*
> *Because the mind's eye lit the sun.*

This yearning to find again a world both beautiful and intelligible has, of course, a religious dimension. The question of design leads to the question of a Designer. On this point Nemerov is thoughtfully noncommittal: his agnosticism has, I should say, more spiritual depth than the faith of many conventional believers. When one considers the unseemly extremes toward which the problem of belief can propel an inquiring spirit—the crass cynicism of the village atheist, the holier-than-thou crouch of the convert—one appreciates the poise with which Nemerov continues to maintain his difficult balance on the edge of Occam's Razor. The oscillation in "The Blue Swallows" between a hunger for ultimate significance and a self-accusing skepticism that suspects that appetite of sentimentality or obscurantism is present in many of his poems, lending intensity to his ongoing dialogue with nature.

To turn from theme to technique, Nemerov's encounters with the appearances he finds so lovely and so enigmatic are precisely rendered, frequently memorable. Even apart from the train of thought attendant on it, one remembers the description in "The Mud Turtle":

> *His lordly darkness decked in filth*
> *Bearded with weed like a lady's favor,*
> *He is a black planet, another world*
> *Never till now appearing, even now*
> *Not quite believably old and big,*
> *Set in the summer morning's midst*
> *A gloomy gemstone to the sun opposed.*

In his better poems Nemerov shares the gift that Frost had in *his* better ones, a sort of tact which keeps a proper distance from the scene observed, an instinct for finding a vantage point

Robert Shaw's first book of poems, Comforting the Wilderness, *appeared last October as a volume in The Wesleyan Poetry Program.*

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neither too close nor too far away. The presences of nature and the presence of the poet alike have room to make themselves felt; the verse itself (often a blank verse which like Frost's is relaxed, flexible, but ultimately true to form) gives a sense of spaciousness in which the mind can pursue its explorations freely.

Nemerov is a more versatile poet than I may thus far have indicated. Besides his most typical meditative colloquies with nature, he has written some fine narratives ("The Pond," "A Day on the Big Branch") as well as some brainy metaphysical lyrics that make their points without an evocation of landscape ("A Clock with No Hands," "Moment," "Celestial Globe"). There are also a great many satirical verses of various lengths. Lately Nemerov has relied heavily on the epigram, or as he likes to call it, the "gnome," as a favored instrument of ridicule. These little squibs, like the heavier artillery that preceded them, batter their targets in a highly satisfying way. Here is one of the more benign ones, a condensed but largely accurate history of American poetry of the last few decades:

From epigram to epic is the course
For riders of the American winged horse.
They change both size and sex over the years,
The voice grows deeper and the beard appears;
Running for greatness they sweat away their salt,
They start out Emily and wind up Walt.

I have always enjoyed the wit and trenchancy of these pieces in the past, and thought them a bracing complement to the poet's less topical contemplations. Seeing them amassed in the present volume, however, I find myself noticing that the targets are in most cases predictable (U.S. foreign policy, the consumer society, passing fads and persistent fatuities) and that they sometimes repeat themselves with diminishing force. Nemerov years ago did such a number on Santa Claus ("Somewhere on his travels the strange Child/Picked up with this overstuffed confidence man . . .") that you'd think he would feel able to let Christmas and its "shopping days" alone. Coming on his later treatments of the subject I began to wonder in dismay if he meant to produce something dyspeptic every year to be sent out with greetings of the season. I am glad he has written in this vein, giving voice to his urbane humor and justly provoked asperity. But these gnomes are probably a mite too populous, especially in the latter part of the collection where they may distract one from due attention to the fine recent work in serious modes.

I have few other reservations regarding this book. The two verse plays on biblical themes remain blank spots to me. And the poems in the first two volumes included here are admittedly derivative, bearing the typical influences of their period—Yeats and Auden, in particular. Yet these are honestly crafted, and interesting as background to Nemerov's mature achievement. His distinctive voice first emerged in parts of his third book, *The Salt Garden* (1955), and reached its dominant declaration in *Mirrors and Windows* (1958).

He continues to exercise mastery in exploring his perennial themes; it is remarkable to notice how many of his most recent poems are among his strongest. It is as though his mind, from regarding nature with such steady and respectful attention, had been blessed with something of nature's own capacity for self-renewal. One later poem, "Beginner's Guide," can be read as a parable expressing the poet's evaluation of his life-long scrutiny of the world around him, and his attempt to match words to the world. He speaks of the guidebooks gathering dust on the shelf, discarded as nature's flux and prodigality outstripped attempts at classification:

The world would not, nor he could not, stand still.
The longest life might be too short a one
To get by heart, in all its fine detail,
Earth's billion changes swinging on the sun.

The poem ends with some stanzas which are vintage Nemerov: wry, touching, and modestly inspiring in their summing up:

Was it a waste, the time and the expense,
Buying the books, going into the field
To make some mind of what was only sense,
And show a profit on the year's rich yield?

Though no authority on this theme either,
He would depose upon the whole that it
Was not. The world was always being wider
And deeper and wiser than his little wit,

But it felt good to know the hundred names.
And say them, in the warm room, in the winter,

Contest For New Poets

"Discovery—THE NATION, '78" has been opened jointly by The Poetry Center of the 92nd Street YM-YWHA in New York City and THE NATION. The competition, now in its fourth year, represents a fusion of The Poetry Center's "Discovery" contest and THE NATION's poetry prize. It is designed to attract larger audiences for young poets through the combined media of publication and poetry recital.

WINNERS of the 1977 contest were Sharon Bryan, James Galvin, Jeffrey Greene and Debora Greger. They gave a group reading at The Poetry Center on May 2, and had their poems published in THE NATION on April 30.

Contest Information

OPEN to poets whose work has not yet been published in book form. Book form includes chapbooks (small editions) and self-published books.

REQUIREMENTS: Ten poems (not more than 500 lines) of original poetry in English are to be submitted.

THE AWARDS: Each of the four winners will receive an honorarium of $50 and will be invited to read at The Poetry Center on Monday, May 8, 1978. Each winner will have one previously unpublished poem printed in THE NATION magazine.

MANUSCRIPT DETAILS: Submit four complete sets of the ten poems, each set securely fastened. Your name, biographical information and information indicating whether a particular poem has been published should not appear on the poems. Rather, a separate cover page should include your name, address and phone number. Manuscripts will not be returned, so please retain a copy of your submission. THE NATION reserves the right to publish at its regular rates any previously unpublished poems.

JUDGING will take place in April; winners will be chosen by judges whose names will be announced after the contest is over.

DEADLINE for receipt of poems has been extended to March 4.

SEND ALL ENTRIES TO: The Poetry Center of the 92nd Street YM-YWHA, 1395 Lexington Ave., New York, N.Y. 10028. Direct inquiries to Betsy Dunn, Assistant to the Director, The Poetry Center.

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Drowsing and dozing over his trying times,
Still to this world its wondering beginner.

Nemerov's contribution to our literature—as a gifted writer of fiction and critical prose, but pre-eminently as a poet—does not seem to me to have received as much celebrity as it deserves. Perhaps this is because he is so determinedly unhistrionic, refusing to equate feeling with noise. This unfashionable approach is one which I find appealing, believing as I do that my emotions as a reader, like the ingredients of a martini, are meant to be stirred rather than shaken. Nemerov's virtues are all in fact unfashionable ones for our time: vivid intelligence, an irreverent sense of humor, a mastery of formal verse, an awareness of mystery. One can only hope that the climate may have changed enough for this collection to attract a wide audience of "wondering beginners." Such readers can expect to be charmed by the easy flow of Nemerov's reasoned discourse, and moved by those fine moments in his poems in which reason is overcome by awe. □

O'Brien's Irish Stew

A FLANN O'BRIEN READER. *Edited by Stephen Jones. The Viking Press. 447 pp. $15.*

J.D. O'HARA

Brian O'Nolan (1911-66) was born in Straban, County Tyrone; for most of his life he was a Dubliner and a functionary in the Irish civil service; he died, with some appropriateness, on April 1. He was also a part-time writer of satiric newspaper columns, plays, and TV scripts, most of them under the pen name of Myles na gCopaleen. Under another name he also wrote a number of rather unsatisfactory novels. They include *The Third Policeman*, an oddly uninteresting account of a murderer's post-mortem existence; *The Hard Life*, a description of unpleasant young men growing up in a nasty Dublin; *An Béal Bocht* (anglicized as *The Poor Mouth*), a satirical parody of Irish novels about grim country life; and *The Dalkey Archive*, a talky sci-fi game in which St. Augustine is brought back from the dead and James Joyce is still alive, admitting only to *Dubliners* and yearning to join the Jesuits.

Like Joyce, O'Nolan graduated from University College, Dublin, but with better grades and a great reputation as a satirical debater and journalistic wit; like Joyce he was a Catholic with a considerable distaste for the Church Militant; like Joyce he was fond of Irish colloquial speech, listened for its tunes, turns, and absurdities, and saw Irish life primarily and pejoratively in the categories of language, family, church, and state. But where Joyce chose exile, O'Nolan stayed in dirty Dublin, joined the despised political establishment, clung to the faith even while he mocked the Church, and—like so many Irish—sank deeply into bitterness, sneering, drink, and self-hatred. The cheery if random and inconsequential wit of his early journalism darkened into savage attacks on stupidity, conventionality, and cliché—targets at once beneath sensible criticism and immune to it. He grew more and more obsessed with the subject of drink as his health and abilities suffered from it; and his attitude toward the rest of the world became obsessively hostile. He muttered about "niggers" and "the bawling of a parcel of Wops in 'Grand Opera' "; he described Augustine as a man "immersed in thievery and graft and determined to get up on every woman or girl he meets," who "reaches a point of satiation and meekly turns to bestiality and buggery. (His *Confessions* is the dirtiest book on earth)." Replying to a criticism of the *Dalkey Archive* MS., he wrote: "I'm not happy at all about the treatment of Joyce: a very greater mess must be made of him. Would one of his secret crosses be that he is an incurable bedwetter?" He denigrated O'Casey, Synge, Frank O'Connor, and Seán O'Faoláin, returned recurrently to Joyce like a tongue to a sore tooth, and praised wholeheartedly perhaps only once: "He was the best man in the world for clever honest fun, for sneering at bores, buffs and bowsies, the best man for drawing, invention, imagination and vituperation." Who he? Walt Disney.

A strange and unattractive man; why should we be mindful of him? Because under his novel-writing pseudonym of Flann O'Brien the young student and newly graduated civil servant wrote one of the most delightfully silly novels of our century, better even than Sheila Gibbons's *Cold Comfort Farm*, a comic cartoon version of college life, an exuberant parody of Irish myth and current Irish literary tastes, a whirling and free-wheeling fireworks display of words and voices and linguistic absurdities: *At Swim-Two-Birds*. The plot is ridiculous: a college student begins a novel containing a writer who creates or borrows characters who then turn against him. The characters are two-dimensional at best (one of them, like a point in geometry, has location without dimension). Finn MacCool tells a long story about King Sweeny who, enchanted to a bird, suffers throughout Ireland while droning endless self-centered verses. A Good Fairy plays poker with a Pooka for the soul of a new-born character. The college student struggles with drink, lethargy, and class attendance. The budding novelist labors to amuse his best friend and severest critic with readings from his work in progress; and all this and much more are reported in delightfully bad styles. . . .

Well, you'd have to of been there. Of course that's a problem with almost all such highly verbal comedy: it distorts something we know to bring out the absurdities, but we have to know that something first. *Cold Comfort Farm* means little to nonreaders of *Wuthering Heights*, for instance, and much of Donald Barthelme's odd charm depends on our familiarity with all kinds of subliterary dreck. (Though Barthelme is much more than a comedian.) Happily, though, Joyce has made the English-reading world familiar with an immense range of Irish verbiage; as Imperial Rome was every literate person's heritage in the 18th century, so Ireland is ours. To be sure, Joyce is funnier than Flann O'Brien—but he is also a dozen other things simultaneously, and we are not always up to him. We can easily get up to *At Swim-Two-Birds* . . . and often; it remains remarkably fresh down through the years. (To Joyce readers, anyhow. But I read a marvelous scene to my non-Joyce-reading daughter, with great rhetorical *éclat*, I thought, and she nearly wept out of sheer boredom. On the other hand, Joyce himself admired it a great deal. The book, not my reading.)

O'Brien/O'Nolan's college chum, Niall Sheridan, who later pruned the MS. of *At Swim* (where he appears as Brinsley, pruning the MS.) published a student article in which he objected to the intrusive narrators of authors like Thackeray and asserted the old cliché *ars est celare artem*. He may have been serious, but he helped O'Brien to as-

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semble a remarkably visible heap of varied voices; scholar Anne Clissmann counted "some thirty-six different styles and forty-two extracts" (from other works). To be sure, *Ulysses* was first and better, but even to be in the running is no mean feat . . . and all this is presented with continuous and amusing invention, juvenile but controlled high spirits ("two decadent Greek scullions, Timothy Danaos and Dona Ferentes"), and professional knowledgeability about language.

To be sure, the themes of O'Brien's later fiction are here: the ignorant and threatening uncle, the excessive drinking, the sudden violence, and the perverse sexuality, among others. But goodness here overcomes evil, the violence is almost all comic, the uncle even turns out kindly in the end, and O'Brien succeeds in keeping his devils at bay, even the devil of drink: "I was down in Parnell Street . . . with the Shader Ward, the two of us drinking pints. . . . I was talking to the Shader . . . about God and one thing and another, and suddenly I felt something inside me like a man trying to get out of my stomach."

The *Flann O'Brien Reader* is put together under other assumptions about the value of his writing. It includes only some 20 pages from the beginning of *At Swim*'s first chapter (necessarily; the novel never gets past chapter one). It gives equally brief portions from the other novels, and adds to them bits, pieces, and whole chunks from the journalism of Myles na gCopaleen and some stories and TV scripts, tangential materials that here amount to almost half the book. The editor, Stephen Jones, is the author of one of the great unknown delights of American literature, the strange and enchanting travel book *Drifting*; thrice fortunate the reader who chances on the odd copy and grapples it to his soul. *Drifting*. Ask for it by name. Jones here contributes relentlessly casual introductions to O'Brien and his separate works, in a style brought on, one fears, by too much indiscriminate reading of his man. He gives us O'Brien warts and all, which is honest enough surely but tends to reduce him to his own sad, late estimate of himself, "a competent literary handyman," an odd compound of Stephen Leacock, Edwin Newman and Roald Dahl. But the sobered reader of this *Reader* can always turn next to the complete text of *At Swim-Two-Birds* (Plume/New American Library, $3.95) and renew O'Brien's youth and his own. As that work's narrator puts it, "I recall that the dexterity and ready wit of this conversation induced in all of us a warm intellectual glow extremely pleasant to experience." *Slainte*! □

Out from Under the Big Top

THE RINGMASTER. *By Darryl Ponicsan. Delacorte Press. 307 pp. $8.95.*

GEORGE DEAUX

The circus is an act of defiance. Acrobats, jugglers, stilt walkers, trapeze artists defy gravity. Trainers persuade animals to defy nature: chimps ride motorbikes, pigs dance, lions leap through fiery hoops, elephants stand on their heads. Victims of nature defy every canon of good taste by brazenly exhibiting their deformities and then laughing at the suckers who come to gawk. In an age of massive rock shows, sports spectacles, and television, the circus, especially those circuses under canvas that turn up from time to time in rutted fields, fairgrounds, and shopping center parking lots, defy all probability by their very existence.

It's a pointless defiance. Science and technology have so thoroughly subdued nature that circuses, like bullfights, have become an anachronism. When lions are threatened with extinction, it merely heaps insult upon injury to subdue them in the arena. But the gesture is no less courageous for being pointless; and no circus is more anachronistic, pointless, and courageous in its defiance than The Great Sullivan Brothers Circus, Moskowitz owner.

Moskowitz has the faith, and he suffers the torments of Job in its service. He watches his decrepit machinery sink into the mud, collapse on the highway, destroy itself in the charge of the unreliable and inexperienced Toby Tylers who drift in and out of his crew. His lions escape. His performers blow the show. His wife runs off with the stilt walker and $35,000 in receipts. Worst of all, nobody comes to the circus. Moskowitz pops another Tums, pisses another kidney stone, and presses on, bringing to one small town after another a dream of glory which the population neither shares nor understands. He sustains himself with the patient optimism of Job and the cynicism of P.T. Barnum. His is a vision of the circus as it used to be; he has invented, in fact, a Golden Age of Circuses: his father, he says, founded The Sullivan Brothers and once the big top "was so big you couldn't be heard one end to the other. Ten thousand people could sit inside . . . the center poles were made of glass, filled with water and live goldfish." He lies, of course, and everyone knows he lies. Mosk is The Sullivan Brothers' first and only owner, but his crazy vision sustains his courage. You wouldn't want to tell Mosk he's courageous. It's quite enough for him to get by from day to day. "You know what the men are saying about you? That you live like a nigger, day to day." Mosk replies: "I'd kiss the nigger's ass who could teach me that trick."

Darryl Ponicsan's novel is a story of courage and defiance in service to a crazy dream. Moskowitz's poor, haggard crew presses on day by day from town to town defying fate, nature and public taste in order—even the most experienced of them, like Rex Starback, the ringmaster at Sullivan Brothers and of the title of the book—to "play circus." Starback was a lion trainer until, ten years before the story begins early in the 1976 season, he made the mistake of turning his back on Old Dan. A costly mistake: Dan's attack left him with ugly scars, a limp, a well-earned but personally troubling fear of lions, and serious doubts about his manhood. Now he is back as ringmaster, breaking into sweaty panic any time he passes near the lion cages. There is nothing particularly subtle about this association of lions, courage and manhood. Starback equates courage with an absence of fear and manhood with domination. "One male knows the loss of the male essence in another," he thinks. Millicent, Princess of Aerial Dynamics and Starback's lover who abandoned him after his accident, returns. She leads him to the lion cages and challenges him to reach through the bars and pet Hondo. She says: "Pet him and you can fuck me."

Nothing very subtle about anything here really, including the rest of the dialogue, the general style, or the story. It's predictable and as straightforward as Millie's invitation. What, after all, can happen in a circus book? A lion escapes, a wire walker falls, the pretty girl on the flying trapeze sleeps with

George Deaux's novels include The Humanization of Eddie Cement *and* The Black Death.

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the lion tamer. Characters appear and offer promise of dramatic development, only to blow the show and disappear from the novel. Minor characters are so sketchily drawn that we need tags to identify them: Jimmy Props, Gene Tuba, Dallas Electrician. Moskowitz endures in hope and defiance as his world collapses around him. Starback struggles on in search of his lost manhood. Finally, when the new trainer is attacked, Starback overcomes his fear, enters the arena, and redeems himself. His insight into the nature of things? "There is only a pack of animals and one of them must be dominant, the alpha animal."

Taken as metaphor, such pronouncements are troubling and probably dangerous. Absence of fear may be a condition of facing lions in the arena, but nowhere else is it an ideal of courage. Others who perform dangerous acts before audiences, bullfighters and race drivers for example, are unsuitable to their trades unless they know fear and control it. If Starback's ideas were transported to, say, Indianapolis Motor Speedway, nobody would get on the track with him. The political implication of Starback's notion of the alpha animal is best left unexplored.

The charm and power of this book come from that fact that Darryl Ponicsan's circus is not a metaphor of anything. It's a circus. His people are circus people confronting real crises. Sometimes even a flat tire is nothing more than a flat tire; and in bad weather with 30 miles to go and only a few hours to show time, a flat tire on the left rear of your prop truck, all by itself and without any symbolic association, is quite enough to set a reader on edge. Concepts of faith and courage are simplistic; but perhaps that is what's needed in the face of honest-to-God challenges and danger. Minor characters are sketchily drawn; but in an operation where Mosk and Starback don't know who will be in the ring until the band begins to play—and as often as not don't know if they even have a band—the shadowy and shabby crew is quite appropriate. The story is straightforward and predictable but so, apparently, is circus life. It's told with the gritty realism of Ponicsan's earlier novels.

It is to Darryl Ponicsan's credit that he tells a realistic tale of circus life. It is to his great credit that he lets the reader's own image of circus as metaphor work without any insistence on his part. It is possible to read *The Ringmaster* for the rare pleasure of its fast-paced, eventful narrative, or for the story of Rex Starback's struggle with fear and self-doubt. I prefer to read it as Moskowitz's persistence in his romantic vision, which he holds to without the help of anything on earth. □

An Exchange of Views: Raoul Berger & E. Richard Larson

Raoul Berger, well known for his books on executive privilege and impeachment, recently published Government by Judiciary. *He argues that, as a result of a basic misreading of the Fourteenth Amendment, the Supreme Court in the past twenty-five years has wrongly decided such landmark cases as* Brown *v.* Board of Education *and the* Baker *v.* Carr *one-man, one vote case. E. Richard Larson* (The Nation, *December 10*) *responded that Berger's interpretation and his history of the Fourteenth Amendment were in error.*

My *Government by Judiciary: The Transformation of the Fourteenth Amendment*, is addressed to what Prof. Philip Kurland has termed "the most immediate constitutional crisis of our present time, the usurpation by the judiciary of general governmental power on the pretext that its authority derives from the Fourteenth Amendment." If such a study is to be charged, as does E. Richard Larson, with "misreading the Fourteenth Amendment," it should be on the basis of fastidious regard for the facts. Instead, Larson's version of the facts is so grossly inaccurate as to impeach his critical competence. As Al Smith used to say, let us look at the record.

Referring to the antecedent provision of the Civil Rights Act of 1866 prohibiting "any 'discrimination in civil rights,'" Larson asserts that John Bingham, author of Section 1 of the Amendment, "ardently supported the Act's broad prohibition. When the broad prohibition was deleted, Bingham argued that the bill was now too narrow." Nothing could be further from the truth. It was Bingham who moved to strike the "no discrimination" clause to render it "less oppressive and therefore less objectionable," stating that almost "every state in the Union does make some discrimination . . . in respect of civil rights on account of color." If the state constitutions, he continued, "are not to be abolished by your act," those "oppressive and I might say unjust provisions" must be deleted.

Next, Larson alleges that "Berger concentrates on the remarks of only certain of the legislators in order to support his argument that they sought to exclude rights of suffrage and desegregation from the enumerated rights of the 1866 Act." Neither was included in the "enumerated rights"; at best they might have been included in the deleted "no discrimination" clause. However, even that clause, James Wilson, chairman of the House Judiciary Committee and manager of the bill, assured the House, did "not mean . . . that their children shall attend the same schools. These are not civil rights." Alexander Bickel, "whose extensive research" Larson would defend against me, wrote "it is impossible to conclude that the 39th Congress intended that segregation be abolished; impossible also to conclude that they foresaw it might be, under the language they were adopting."

Turning to suffrage, Larson prefers generalities to specifics; for example, Sen. Jacob Howard's remark that the Amendment "abolishes all class legislation in the States." Yet Howard said of Section 2 of the Amendment that it "leaves the right to regulate the elective franchise with the States, and does not meddle with that right." Bingham, on whom Larson also relies, stated, "we all agree . . . that the exercise of the elective franchise . . . is exclusively under the control of the States. . . . The amendment does not give, as the second section shows, the power of regulating suffrage in the several States." The fact is, as Senator Howard stated on behalf of the Joint Committee on Reconstruction of both houses, "that three-fourths of the States . . . could not be induced to grant the right of suffrage, even in any degree or under any restriction, to the colored race." That is confirmed by the Report of the Joint Committee, which drafted the Amendment: "It was doubtful . . . whether the States would consent to surrender a power they had always exercised, and to which they were attached," and so the committee determined to "leave the whole question with the people of each State. . . . " Larson's "certain of the legislators" are thus seen to be the most authoritative spokesmen, whose pronouncements are given greatest weight.

Larson next triumphantly flourishes

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the Fifteenth Amendment, which at last checked racial discrimination with respect to suffrage, to prove that "the concept of black suffrage" could not have been "politically abhorrent to the Republican Congress." This is not the place to examine the changes in political currents that led the Congress to embrace in 1869 what they had rejected in 1866. Suffice it that the Supreme Court in 1874 declared, "after the adoption of the Fourteenth Amendment, it was deemed necessary to adopt a Fifteenth. . . . If suffrage was one of the privileges and immunities [of the Fourteenth] why amend the Constitution to prevent its being denied on account of race?"

Another Larson flight of fantasy is that "the Reconstruction Congress was controlled by the radical Republicans and it truly was a revolutionary Congress which overwhelmingly invaded or invalidated States' rights." In a recent study, a Reconstruction historian, M.L. Benedict—there are others—concluded that the radicals "did not dominate Congress during the Reconstruction era. More Republican Senators (scaled) consistently conservative than radical"; in the House "consistent non-radicals (Conservatives and Centrists) still outnumbered radicals"; "the non-radicals had enacted their program with the sullen acquiescence of some radicals and over the opposition of many." Sen. John Sherman told a Cincinnati audience in September 1866, while the Amendment was in progress of ratification, "They talk about radicals; why we defeated every radical proposition in it." The reason, Sen. William Fessenden, chairman of the Joint Committee, said, "We cannot put into the Constitution, owing to existing prejudices and existing institutions, an entire exclusion of all class distinctions." These and myriad other facts are spread out in my book, but Larson unheedingly galloped by, hagridden by his own preconceptions.

Larson notices that my "scholarship on impeachment and executive privilege is widely respected." What has suddenly deprived me of scholarly capacity? Perhaps the explanation is that my liberal fans, who eagerly resorted to my studies to topple Nixon, are now dismayed because I apply the same criteria to measure the powers of the Supreme Court. But to employ a double standard for the realization of disparate political aims is unworthy of a scholar.

For decades liberals berated the Court for reading its own economic tenets into the Constitution to halt the spread of "socialism," e.g., income taxes. Then liberal aspirations were effectuated for a brief spell by the Warren Court, and suddenly a practice that had been anathema became sanctified. Back in 1942 I wrote that I liked it no better when Justice Black read *my* predilections into the Constitution than when McReynolds and Co. read in *theirs*. The test of constitutionality is not "whose ox is gored." My commitment is to the Constitution, not to a favored *result*. With Justice Harlan I consider that "when the Court disregards the express intent and understanding of the Framers, it has invaded the realm of the political process . . . to which the amending power was committed." For it is the people who are given the exclusive power of amendment. The purpose of my books was to spread the documenting facts before the reader; the hasty goulash concocted by Larson does scant justice to the massive evidence there set forth.

Raoul Berger

Mr. Larson Replies:

Professor Berger's devotion to scholarship, he believes, leads him to a neutral review of the facts. His book and his response to my review reveal otherwise.

He treats at length and gives great weight in his book to the remarks (made in the 39th Congress or on the campaign trail) of several minor legislators not responsible for drafting the Fourteenth Amendment. Those remarks, he argues, support his thesis. But when faced with opposing remarks by other minor legislators, he argues that they are irrelevant—on the basis of a 1976 Supreme Court decision stating that remarks "made in the course of a legislative debate or hearings other than by persons responsible for the preparation or the drafting of a bill are entitled to little weight." Apparently, Professor Berger believes that conclusion to be inapplicable to those statements he approves.

The legislators with primary responsibility for the Fourteenth Amendment, of course, were John Bingham in the House and Jacob Howard in the Senate. Their extensive remarks, with several isolated exceptions, give an expansive meaning to Section 1 of the Fourteenth Amendment. But Professor Berger's neutrality leads him to dismiss Bingham not only as "a muddled thinker given

HOLDING PATTERN

Extend the high salt thrust
of the dolphin, hold him
before a star, sleek and apart.
What it is to see him,
a celestial glyph rising
on the night sky, breaking
all codes of sea and star
and migratory flight.

Katherine Soniat

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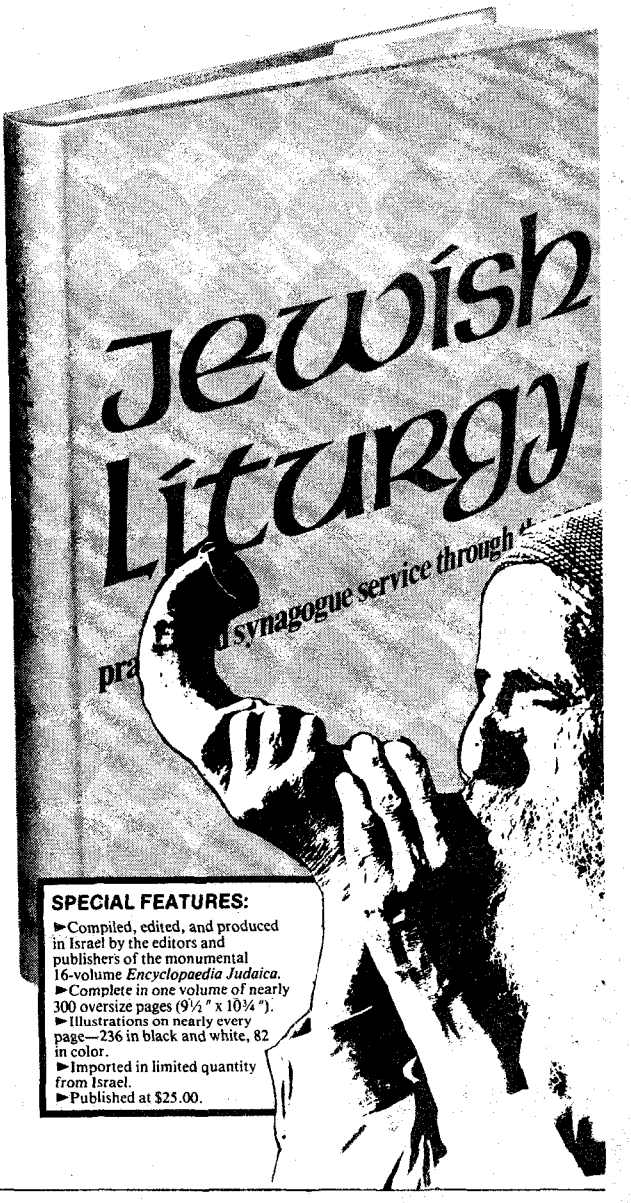
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to the florid windy rhetoric of a stump orator" but also as "a confused, imprecise and vacillating witness"; and to label Howard as "a far less acute and careful lawyer" than another Senator whose remarks satisfy Berger's argument.

Professor Berger is similarly neutral to the research of our acknowledged Fourteenth Amendment scholars. The early treatise of Harry Flack is attacked as a "feeble and unsophisticated analysis." Charles Black is condemned as an "uncurbed partisan" whose writings illustrate "frailty of reason." The analyses in Leonard Levy's recent book are "often incongruent." Jacobus ten Broek is "fuzzy," a "neoabolitionist" who "proves too much." And the research and analyses by Alexander Bickel, Alfred Kelly and William Van Alstyne are "hypotheses" of "speculative fabric."

Not surprisingly, the foregoing Fourteenth Amendment scholars have reached conclusions different from those advanced by Professor Berger. Since my conclusions also differ from Professor Berger's lonely argument, which he constantly argues is "unequivocally," "indisputedly" and "conclusively proven," yet another attack was not unexpected.

E. Richard Larson

THE VILLAGE

(For James Merrill)

Green tunnel through maples;
A bridge over twinned pairs of rails
Gathers the driver into
An idea. Spilled down a white fence,
Trumpet vines in jubilee

Herald today's parade,
Our Lady of Fatima, reverenced
Here in Azores Portuguese.
A white church looks on; the sunstruck
Brasses glitter and are gold.

Natural life wants form:
In their clipped garden two women
Smoke, review without surprise
The candid, abundant lilies,
Think back on Europe between

Two wars—they have discarded
The city, safe in quarantine
Down at the newsstand two streets
Over. The milky, byword fog
Blows in, punctuated now

And then by dim A-flats
From the Sound, the gamut no more
Varied than that half-ellipse
Fanlight cut under the gables
Of every Federal house

On Main or Water Street.
A summer visitor is lost
In the evening's gray dissolves
Among the blistered, drydock hulls
Of the indistinct boatyard.

He walks and takes his time
From the tempo of a harbor
Told by the metronome masts
Of sailboats made to balance at
Andante ma non troppo.

Old pilings—each crowned with
A comedic gull tiny whims set
Guffawing, head thrown back, maw
Wide and human—cannot translate
The water's calligraphic

Renderings of what they are;
But a mind at the very end
Of the pier identifies
With those mercurial gerunds,
Trembling, reflecting, darkening. . .

He will blink at weathered
Boards, the sumptuous disrepair
Of his nautical surround,
Where covered docks sag and moult,
board
Wears down to a moiré grain

As gray as fog or thought;
Idly note broad-shouldered gaspumps,
The chest marked ICE with ice-
capped
Capitals; and, like an old board
Himself, play softly down his kind,

A passage on wooden keys
Toward his interim house, the star-
deck
Night will canopy with clear skies,
Galaxies, the bright dust of space—
A last, near, distinguished thing.

Alfred Corn

ART

LAWRENCE ALLOWAY

Stuart Davis made a great impression on me when I lived in England. I saw a photograph of him painting in his studio with the television on; it was the most *American* image of an artist that I had ever seen. A new exhibition of Davis at the Brooklyn Museum (until March 19) investigates the principles of his art as well as his native stance.

John R. Lane is the curator of the show and author of the excellent catalogue. It is a clear study—based on a solid familiarity with the primary materials—of Davis's development. Either the right things happened to him or he was marvelously able to benefit from all occurrences. Born in Philadelphia, he acquired the feeling of the Ashcan painters for vernacular subject matter. Next came his assimilation of Cubism in Paris, and the transformation in his still lifes of the French guitar into the technology of the eggbeater. He adapted cubism to the iconography of the American scene. American scene painters were urban as well as agricultural, but, except for Davis, they were all antimodernist. And Lane concludes with Davis's "gradual abandonment of subject matter" under the influence of Mondrian in New York. It is a convincing account of a forceful artist's logical course.

Lane emphasizes the theoretical base of the pictures. Behind the jazzy top-surface is a systematic color theory and, later, a study of *gestalt* psychology. Davis made acute observations on the status of the part in the whole of his later works. Selections of his copious notes about art have been published before, for instance in Diane Kelder's anthology on the artist (Praeger, 1971), but the swing-shift look of his art has prevailed over its theoretical content. However, Lane sets Davis's writing squarely beside the art and the title of his show insists on it: "Stuart Davis: Art and Art Theory."

The exhibition forces us to think again about (European) cubism and the American extensions of it. Davis mediates between the style of the Old World and the subject matter of the new. He possesses a lexicon of Parisian style in relation to advancing American modernism. In "Report from Rockport," for instance, there are two words in the townscape—"Seine," undeniably French, and "garage," either French or American. (In two of the sketches for this picture Davis tries out both "garage" and "hangar." He summarized this cultural exchange himself in the brilliantly titled "Colonial Cubism." He converts the signs of Synthetic Cubism into a readable script. Davis is not a Yankee at the Court of King Arthur but a Juan Gris who has been privileged to see Brooklyn Bridge. The scenic format of Davis's pictures, always including precise architectural detail, denotes the urban environment with the clarity of road signs, company logos, or airport Esperanto.) I used to have a notion that internationalism was to feel at home, in

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the same clothes, in Kennedy, Rome and Zurich airports. That is the kind of informational urbanism that Davis's art implies as it expanded from the circular marble tables of Left Bank cafés: His is the cubism of Interpol.

Davis's relationship with the Abstract Expressionists, his juniors by roughly a decade, is discussed by Lane, though not as conclusively as in his account of the development and aesthetics. On the early 1940s Lane writes that "Davis joined in the general reaction against late cubism with its centrally focused design, geometric regularity of drawing, and illusion of shallow depth." It is true that several of the paintings of this time, like "Ultramarine" and "Arboretum by Flashbulb," show a dispersed, episodic play of forms, but I don't think that is enough to sever Davis's dependence on cubism. The fragmented parts are still basically topographical in reference, and his confidence in composition (the efficient collaboration of contrasted forms and colors) never wavered. It was Pollock's drip paintings or Barnett Newman's monochrome canvases that broke the prestige of cubism as a model. Lane records that Davis could not stand the subject matter of Abstract Expressionism. Their myths and totems, their subjectivity and awe, offended his rational and moderate values.

It is cubism again that separates him from Pop art. Lane remarks on his use of "commercial art themes that would be taken up by the Pop artists." Perhaps, but not from his hands, and Lane records that Davis was not grateful to be linked with them. As an example of the difference, take "Little Giant Still Life" (1950), a painting by Davis of a matchbook cover. It it true that Warhol later did paintings of the same subject, but his were without the cubist spatial kinks that animate Davis's surface and are derived ultimately from Juan Gris.

The catalogue, published by the Museum is $11.95, but there is also a 12-page pamphlet, an introduction to the show, for $1.50. This is a laudable attempt to spread information about Davis to a wider audience, but the ample book is cheap at the price and the brochure comparatively expensive. □

DOMAIN

The hawk sweeps in on a wing of the sun,
brakes to a stop, trembling and still,
like a skater at the perilous edge of ice
breathing a silent strength. Until

he places you in his domain
there is no movement of wing, talons
as rigid as old pitch around
the branch, the eyes steady as stone.

Then, only then, does he fall
into sundown, his eyes as pointed
as swords, into the stand of spruce,
into some lair, through its dark heart,

down the hollow of the windfall night.

Day on day you walk these woods
and never hear a sound. Then from
nowhere: the terrible beating of wings,
the panicked cry, the toppling home.

This domain you walk carefully in,
aware of the eyes that pierce, the hand
that fells. It is not your place to
speak, nor the place where you began,

and you will not take from the hawk
the beating wing, from the prey the one
last cry, the sun its wing of light.
Only: you count your fears here, down

down the hollow of the windfall night.

Jim Barnes

THEATRE/Harold Clurman

Two short plays dealing with life and death in South Africa, Athol Fugard's *Statements After an Arrest Under the Immorality Act*, and *Scenes from Soweto* by Steve Wilmer, an American resident in London, are being given for a limited engagement at the Manhattan Theatre Club (321 E. 73rd St.). Though neither is an outstanding achievement, each possesses a special importance.

They are important because just now in our theatre when so much that is being offered veers between triviality and pretentiousness, the antidote is contact with reality. "What is reality?," an avant-garde director recently asked me with amused and offhand condescension. My response might have been a kick in the shins as a primary example.

The two plays stir our conscience. Athol Fugard has dramatized an infringement of the 1957 South African Immorality Act which reads "(*a*) Any white female who has or attempts to have carnal intercourse with a colored male person . . . shall be guilty of an offence and (*b*) any colored person who has or attempts to have unlawful carnal intercourse with a white female person . . . shall be guilty of an offence."

Frieda Joubert, a white woman librarian, has an affair with Errol Philander, a black male schoolteacher. We see them as they lie nude together on the library floor after closing hours. Where else are they to go, since he is a married man with two children? It is evident that they dearly love each other. He is of a tender-minded and unaffectedly idealistic nature; she, no longer in her first youth, is a woman of urgent feminine impulse who suffers deep loneliness.

In the "restricted" quarter where he lives there is no water, and he must leave her as the night comes on to find some for his wife and children. She offers hers, but he refuses to take it. He is ashamed to; it is as though she were paying him from her superior condition as a white and he a charity case. His sense of shame is symptomatic of the difference between them. He is frightened, the danger of his situation being much greater than hers.

The police find them, photograph them for evidence and will punish them. In intermittent flashes—presumably the intervals of one photographic "take" after another—the two lovers separately soliloquize their innermost sentiments. The play here departs from realism and enters the realm of poetic statement.

In the woman, because she is protected partly by the color of her skin, we discern no loss of staunchness; in the man, because of the social condemnation of his blackness, we find that he will soon lose the feeling of his manhood, even of being a person. In this way the play summarizes one essential psychological phase of apartheid rule—for those not actually in active rebellion against it.

Written with honest sensitivity, the play cannot be regarded as "mere" propaganda. It is beautifully acted by Veronica Castang, whose lack of self-consciousness at her nudity is quite wonderful, and by Robert Christian, whose expression of emotional hurt and intense attempt to suppress it, become deeply affecting. To use a D.H. Lawrence phrase, they stand before us "naked but not undressed."

Steve Wilmer's *Scenes from Soweto is* propaganda—and no worse or less

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effective for being that. To shun propaganda when it is well founded and properly articulated is hypocrisy.

The play presents a man identified in the program simply as "Black Actor." He is a South African who, though a graduate in higher mathematics from Oxford, chooses to return to his home in Soweto (Johannesburg suburbs reserved to blacks) because he wants to be with his family and his people.

He is, to begin with, as apolitical as it is possible to be under the circumstances. Back in Johannesburg, he finds a responsible job in an Anglo-American engineering firm, where he is befriended by a likably liberal associate of inferior rank, identified as "White Actor." The increasingly savage governmental crimes against the blacks turn the initially passive black mathematician into a participant in, and probably a leader of, civil and industrial sabotage. The police torture him in an attempt to get information about his collaborators. No word except "I don't know" and the defiant cry that thousands of others will follow in his path issues from him. He "dies in detention" as the newspapers put it.

The play, based on a specific instance, is unemphatically and tersely conveyed. It is again acted with simple power by Robert Christian, ably seconded by John C. Vennema. To be noted—a side issue in theatrical aesthetics—is that, while the material is largely documentary, the production has Vennema, the friend, appear also as immigration official and torturing "investigator," and has Christian act both as his victim and a journalist. Neither actor at any time leaves the stage: we see them seated or standing in preparation for their various entrances with almost no change of costume. None of this departure from stage realism detracts in the least from one's belief in the moment-by-moment action. Strict scenic realism is not necessary to create convincing evidence of reality.

This means, as I suggested in my article on experimental theatre (*The Nation*, February 4), that an audience will accept any game or mode chosen for the projection of an idea, if only the substance of the dramatic matter is true, eloquent, valuable and faithfully conceived. □

INDIGENOUS MUSIC/ Nat Hentoff

The fiercest disputes in jazz have involved the very meaning of the word. In the 1940s, battalions of "moldy figs," as they were called, tried mightily to bar the boppers from the official precincts of the music. Some years earlier, there were even those who would have denied entrance to Duke Ellington because he was beginning to write in long forms and was too "European" in his influences. (The latter charge both startled and amused Duke, since it revealed such tin-eared Comstockery on the part of his detractors.)

In time, most of those conflicts about the jazz "legitimacy" of players and styles become anachronisms and expire. By now, for example, hardly anyone but Hughes Panassié—and he has ascended to where the saints are forever marching in—would deny the huge jazz stature of Dizzy Gillespie, the most devilish of the boppers during the holy wars. And Ellington ignored his critics to become the undisputed grand master of jazz composing and orchestration.

One ancient area of combat does remain, though the debates are less acrimonious than they used to be, probably because there are fewer of these practitioners to argue about. The issue has to do with what—and therefore who—is a jazz singer. There used to be ardent buffs and some musicians who insisted that jazz is an entirely instrumental music. True, there were blues singers, but that was an older, adjacent and discrete territory. When jazz arrived, these purists said, no voice could keep inventive and textural pace with an improvising horn. Singers slowed down and diluted the action.

But the school of voiceless jazz could not withstand the contrary singing evidence of Louis Armstrong, Jack Teagarden, Jimmy Rushing (who, after all, did more than sing the blues), Lee Wiley and Billie Holiday (who seldom sang any blues at all). With these and a select group of other singers taking full membership in the jazz club, the argument continued over quasi- and semi-jazz singers. Certain pop vocalists, though clearly influenced by jazz, were not full-fledged, swinging improvisers. Frank Sinatra was an example of a decidedly marginal quasi-jazz singer. His phrasing revealed diligent listening to jazz sources but, put Sinatra in a session without arrangements, and he would be likely to flounder.

During these sorting out arguments of years past, Bing Crosby was seldom presented for consideration as possibly an authentic jazz singer. He had indeed served a kind of jazz apprenticeship in the 1920s—working in Paul Whiteman's band with Bix Beiderbecke, who was also his antic roommate on the road; making as many after-hours sessions as he could find; and in every way he could, as Crosby told me a while ago, "trying to work my way into the company of jazz musicians."

Crosby, however, had turned pop, and few jazz listeners paid him much mind after the 1930s. Yet, under certain circumstances, Crosby kept revealing an ability to come very close to the often elusive line that separated a jazz-influenced from the authentic jazz vocalist.

Consider the newly reissued *Bing Crosby-Louis Armstrong* (Capitol). Granted the greater authority of the singing Armstrong (further buttressed by his classic trumpet), nonetheless Bing is no jazz amateur here. Phrasing like a subtle, supple jazz horn, he plays with the beat as if he were a most assured instrumentalist, and sometimes he floats on the beat. (Bing's time, even in the squarest settings, had a quickening base of jazz pulsation.)

The songs—many with new, additional lyrics by Johnny Mercer, another true musical hipster—encompass *Muskrat Ramble, Sugar, Lazy River* and *Rocky Mountain Moon*. The performances—each singer easefully and wittily playing off the other's variations—provide a set of enduring delight. And Bing's work reinforces my belief that, until the very end, had he chosen to sit in at a jazz session, without scores, he would have had no trouble finding his improvisatory way.

Even in a markedly nonjazz setting, as in the 1977 *Seasons* (Polydor)—his last recording dates—Bing's singing had that pulse. And over that jazz feeling, however blanketed here by the arrangements, Bing was still, in his 70s, a freshly absorbing vocalist. Throughout all those pop decades, the jazz obsession of his youth stayed with him and, in deliberately insidious ways, made him the most resilient and genuinely laid-back-hip of all the pop stars.

But was he a jazz singer? At times. Verily, at times. □

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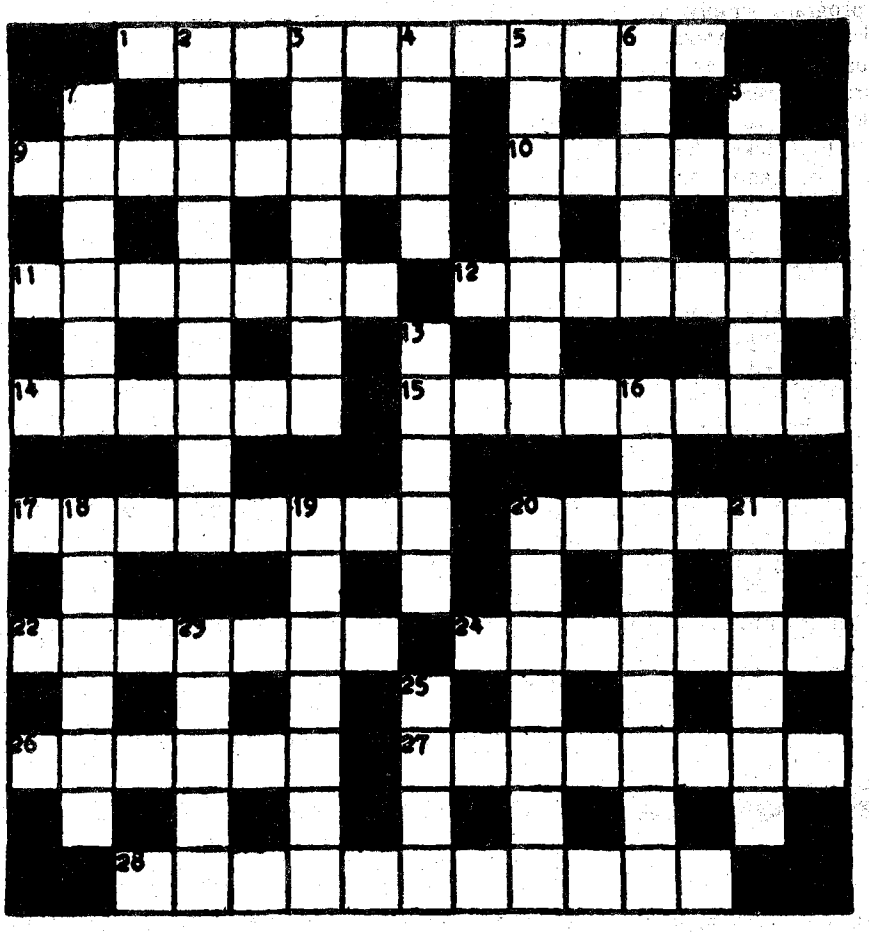

ACROSS

1 Skippers do, and old-fashioned knights had to do this off, before eating in comfort. (4,3,4)
9 Perhaps one in the party gives a card to me after shuffling. (8)
10 See 18 down
11 One way to make an exact duplicate hold fast, carrying on inside. (7)
12 Such power is advantageous at last. (7)
14 Troughs of sprouts, by the sound of it. (6)
15 See 2 down
17 A batter might be responsible for the first part, to end up with a base on balls. (It used to be part of some celebration.) (8)
20 Dull moments seem to, with a storied one reluctant. (6)
22 Wells, rivers, or roses? (7)
24 Trials, alternatively business transactions. (7)
26 With no children about, in place of cows? (6)
27 Like a well known Red, a man about like most of us. (8)
28 They might prove 24, but the sea drives it crazy! (11)

DOWN

2, 23, 15 and 25 Passepartout went so . . . (6,3,5,2,6,4)
3 . . . . and may have gone on so, as well! (7)
4 Shut out of this, possibly, being supposedly rude. (4)
5 What one does is supposed to be frequent. (7)
6 Lull you where French is definitely out — is that what he did? (5)
7 See 18 down
8 Now or then confused with a wasp? (6)
13 Scuttles in kitchens? (5)
16 How one hears gossip at times, when ever aping form. (9)
18, 10 and 7 Evidently hospitalization charges are not messed up with it. (1,5,4,2,6)
19 Sounds like the Rockies, for instance, might be what you have to do to make 4 thus. (7)
20 Before dawn, is it? (7)
21 What can make things run smoothly, taken from this? (3,3)
23 and 25 See 2 down

SOLUTION TO PUZZLE NO. 1714

ACROSS: 1 and 5 across All for the best; 10 Grand jury; 11 Chair; 12 Averred; 13 Diorama; 14 Troll; 16 Extremity; 18 Boarded up; 20 Runts; 22 Restful; 24 Rescind; 26 Ulnar; 27 Powerless; 28 Hoedown; 29 Reeked. DOWN: 2 and 15 Leave of absence; 3 and 20 down Federal Reserve; 4 Roundhead; 5 Toyed; 6 Enclose; 7 Emanation; 8 Ternary; 9 Aghast; 17 Top drawer; 18 Borough; 19 Defer to; 21 Sadist, 23 Lapin; 25 Irene.

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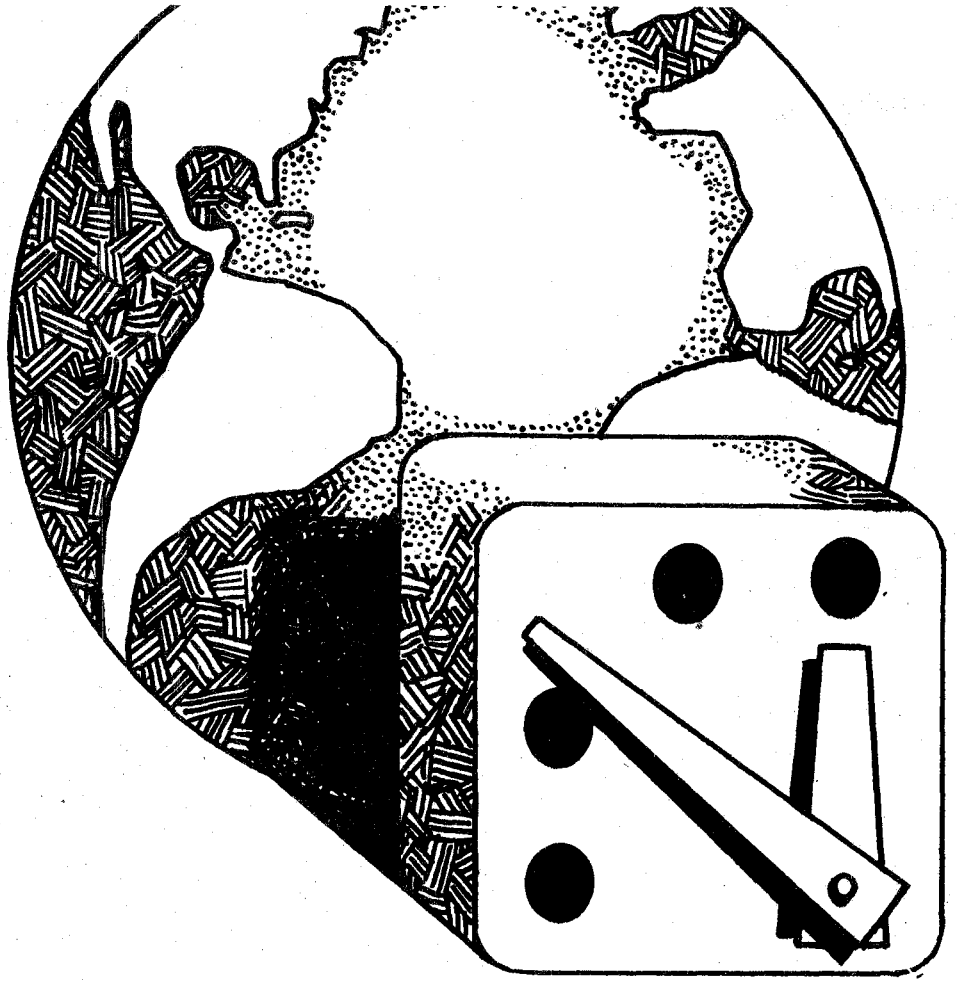

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